CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 610

ANGELUS MILLING COMPANY, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 18, 1944.

CERTIORARI GRANTED DECEMBER 4, 1944.

INDEX

	Page
Docket Entries	1
Petition filed August 20, 1942	7
Respondent's Motion for Better Statement of Claim	42
Motion to Extend Time within which to Reply to Respondent's Motion for Better Statement of Claim	47
Order Granting Petitioner's Motion	48
Amendment to Petition in Response to Motion for Better Statement of Claim	49
Respondent's Renewal of Motion for Better Statement of Nature of Claim to Apply to Petition as Amended	54
Motion for Leave to File Amended Petition	62
Amended Petition	63
Verification of Amended Petition filed 1-16-42	70
Order of Board of 1-20-42 Denying Respondent's Motion for Better Statement of Claim, and Granting Petitioner's Motion Leave to File Amended Petition	71
Respondent's Motion to Dismiss	72
Verification of Petition filed 6-12-42	77
Motion to Permit Prior Motion to Apply to Petition as Amended and Granting Motion 7-27-42	78
Order and Opinion of Board of 8-5-42, Denying Motion to Dismiss	80
Dissenting Memorandum Opinion of Board Chairman William Schwartz	81

Index—Continued

	Page
Answer filed 8-21-42	82
Motion to Dismiss on Jurisdictional Grounds	86
Opinion of The Tax Court	91
Order of Dismissal	98
Petition for Review and Proof of Service	99
Statement of Evidence and Pet's Exhibit 1, Monthly Return of Niagara Falls Milling Co. on April 1, 1935 and Exhibits 1, 2, and 3	109
Corrected Praecipe for Transcript of Record	130
Certificate and Seal	iii
Proceedings in U. S. C. C. A., Second Circuit	133
Opinion, Hand, J.	133
Order for mandate	139
Order allowing certiorari	140

THE TAX COURT OF THE UNITED STATES
WASHINGTON

ANGELUS MILLING COMPANY,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398 P.T.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 132, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 27th day of Sept. 1943.

B. D. GAMBLE,
Clerk,
The Tax Court of the United States.

(SEAL)

ANGELUS MILLING COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 398 P. T.

Appearances:

For Taxpayer: Prew Savoy, Esq., 5-17-37, 629 Munsey Bldg., Washington, D. C.

For Commissioner: J. P. Wenchel, Esq., Raymond F. Brown, Esq., Lloyd C. Hood, Esq.

Docket Entries

1941

Aug. 20—Petition received and filed. Fee paid.

Aug. 20—Two copies of petition served on Chief Counsel, Bureau of Internal Revenue.

Oct. 4—Respondent filed motion for better statement of claim.

Oct. 6—Copy of motion for better statement of claim and motion notice giving each party to and including October 27, 1941 within which to file a brief and October 20, 1941 to request oral argument sent petitioner by registered mail, No. 307,245.

Oct. 6—Copy of motion notice sent to respondent by registered mail, No. 307,247.

Oct. 27—Petitioner filed motion to extend time within which to reply to respondent's motion for better statement of claim.

Oct. 27—Copy of order extended time of each party within which to file brief or request oral argument to and including November 26, 1941, sent to petitioner and respondent by registered mail, Nos. 307,291 and 307,293, respectively. Copy of petitioner's motion for extension sent to respondent by registered mail, No. 307,293.

Oct. 27—Respondent filed memorandum brief in support of motion for better statement of claim.

Oct. 30—Copy of notice setting hearing on merits at Washington, D. C., March 16, 1942 sent to petitioner and respondent by registered mail. Nos. 307,302 and 307,303, respectively.

Nov. 21—Petitioner filed amendment to petition in response to respondent's motion for better statement of claim.

Nov. 21—Two copies of amendment to petition served on respondent.

Nov. 26—Respondent filed motion for renewal of motion for better statement of nature of claim to apply to petition as amended.

Nov. 26—Copy of above motion and motion notice giving each party to and including Dec. 10, 1941 within which to file a brief, and Dec. 8, 1941 to request oral argument sent to petitioner by registered mail No. 307,362.

Nov. 26—Copy of motion notice sent to respondent by registered mail, No. 307,363.

Dec. 2—Petitioner filed request for oral argument with respect to respondent's motion filed November 26, 1941.

Dec. 2—Copy of order setting oral argument Dec. 19, 1941 with respect to respondent's motion filed November 26, 1941 sent to petitioner and respondent by registered mail Nos. 307,776 and 307,377 respectively. Copy of petitioner's request sent to respondent by registered mail, No. 307,377.

Dec. 5—Petitioner filed memorandum in reply to "Renewal of motion for better statement of nature of claim to apply to Petition as amended."

Dec. 9—Respondent filed memorandum brief in support of his motion filed November 26, 1941.

Dec. 9—Chairman assigned member Crewe a Division of One to decide Respondent's motion filed Nov. 26, 1941 and conduct the oral argument with respect thereto.

Dec. 19—Oral argument held before member Crewe. Petitioner granted permission to amend petition on or before Dec. 30, 1941, Respondent's motion filed Nov. 26, 1941 to apply to same.

Dec. 29—Petitioner filed motion for leave to file amended petition.

Dec. 29—Petitioner filed amended petition.

Dec. 30—Two copies of amended petition served on Chief Counsel, Bureau of Internal Revenue.

1942

Jan. 16—Petitioner filed "Verification of Amended Petition sworn to by R. A. O'Connor, Pres."

Jan. 16—Two copies of above "Verification" served on respondent.

Jan. 20—Copy of order denying respondent's motion filed Nov. 26, 1941, and giving him to and including February 16, 1942 within which to answer sent to petitioner and respondent by registered mail, Nos. 307,573, and 307,572, respectively.

Feb. 11—Copy of notice changing hearing on the merits to April 27, 1942, sent to petitioner and respondent by registered mail, Nos. 307,614 and 307,615, respectively.

Feb. 16—Respondent filed motion to dismiss the petition.

Feb. 16—Copy of motion to dismiss and motion notice, giving each party to and including March 9, 1942 within which to file a brief and March 2, 1942 to request oral argument sent to petitioner by registered mail, No. 307,621.

Feb. 16—Copy of motion notice sent to respondent by registered mail, No. 307,622.

Feb. 20—Petitioner filed request for oral argument on respondent's motion filed February 16, 1942.

Feb. 20—Copy of order setting oral argument March 13, 1942, sent to petitioner and respondent by registered mail Nos. 307,635 and 307,636, respectively. Copy of petitioner's request for such argument sent to respondent by registered mail, No. 307,636.

Feb. 23—Respondent filed motion for postponement of filing brief and written request for oral argument.

Feb. 24—Copy of order extending time for filing briefs to May 9, 1942 and continuing oral argument from March 13, 1942 to May 15, 1942 sent to petitioner and respondent by registered mail, Nos. 307,645 and 307,644 respectively. Copy of respondent's motion for such continuance sent to petitioner by registered mail No. 307,645.

April 7—Copy of notice changing hearing on the merits to September 21, 1942, at Washington, D. C., sent to petitioner and respondent by registered mail Nos. 307,714 and 307,713, respectively.

May 4—Respondent filed motion for extension of time for filing briefs and postponement of oral argument upon motion to dismiss.

May 4—Copy of order extending time for filing briefs of each party to and including May 29, 1942 and continuing oral argument to June 4, 1942 sent to petitioner and respondent by registered mail, Nos. 307,747 and 307,748 respectively. Copy of respondent's motion sent to petitioner.

May 29—Petitioner filed memorandum in opposition to motion to dismiss the petition.

May 29—Respondent filed memorandum brief in support of his motion to dismiss the petition.

May 29—Chairman assigned member Edwards, a Division of One, to decide respondent's motion to dismiss the petition and to conduct the oral argument.

June 4—Oral argument held before member Edwards. Prew Savoy, Esq., argued for petitioner. Lloyd C. Hooks, Esq., and Broadlove Smith, Esq., argued for respondent.

June 12—Petitioner filed verification of petition

June 12—Two copies of verification of petition served on respondent.

July 25—Respondent filed motion to permit prior motions, filed January 5, 1942 to apply to petition as amended July 8, 1942.

July 27—Above motion marked "Granted" and copy sent to petitioner and respondent by registered mail, Nos. 307,862 and 307,863, respectively.

Aug. 5—Copy of order denying respondent's motion filed February 16, 1942 and giving respondent to and including August 24, 1942 within which to answer, with copy of dissenting memorandum of Schwartz sent to petitioner and respondent by registered mail, Nos. 307,823 and 307,824, respectively.

Aug. 5—Copy of motion continuing hearing on merits at Washington, D. C., to November 17, 1942 sent to petitioner and respondent by registered mail, Nos. 307,825 and 307,826, respectively.

Aug. 21—Respondent filed answer to the petition.

Aug. 21—Copy of answer served on petitioner by registered mail, No. 307,894.

Oct. 22—Copy of notice changing hearing on merits from November 17, 1942 to February 8, 1943, sent to petitioner and respondent by registered mail, Nos. 307,984 and 307,990, respectively.

1943

Jan. 29—Motion for a continuance sine die filed by General Counsel.

Jan. 29—Motion to dismiss on jurisdictional grounds filed by General Counsel.

Jan. 29—Brief in support of motion to dismiss on jurisdictional grounds, filed by General Counsel.

Feb. 1—Motion for continuance sine die—granted.

Feb. 3—Hearing set February 17, 1943 on motion.

Feb. 17—Hearing had before Judge Murdock on motion of respondent to dismiss, argued. C. A. V. Petitioner's memo. filed.

Feb. 18—Copy of memorandum served on General Counsel.

Feb. 27—Transcript of hearing 2-17-43 filed.

Mar. 22—Agreed motion to correct transcript of argument on motion to dismiss on jurisdictional grounds, filed. 3-23-43 granted.

May 4—Opinion rendered—Murdock, J. Div. 3. Proceeding must be dismissed for lack of jurisdiction. 5-4-43 Copy served.

May 4—Order of dismissal for lack of jurisdiction entered. Murdock, J. Div. 3.

July 27—Petition for review by U. S. Circuit Court of Appeals 2nd Circuit, with assignment of error filed by taxpayer.

July 27—Proof of service filed by taxpayer.

July 27—Statement of evidence lodged.

July 27—Notice of lodgment of statement of evidence and the Court may fix a date for a hearing on the statement, filed by taxpayer with proof of service of notice and statement of evidence thereon.

July 27—Praecipe for record filed by taxpayer with proof of service thereon.

Aug. 6—Objections to petitioner's proposed statement of evidence filed by General Counsel with affidavit of service attached.

Aug. 6—Objections and proposed corrections with respect to petitioner's praecipe for transcript of record filed by General Counsel with affidavit of service attached.

Aug. 6—Praecipe for additional matter to be incorporated into transcript of record, filed by General Counsel with affidavit of service attached.

Sept. 16—Statement of evidence lodged.

Sept. 16—Corrected praecipe for transcript of record filed by taxpayer with proof of service thereon.

Sept. 22—Agreed statement of evidence approved and ordered filed.

Sept. 22—Order enlarging time to October 15, 1943 to transmit and deliver the record, entered.

FILED
2:30 P. M.
August 20, 1941
United States Processing
Tax Board of Review

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 398

The above-named Petitioner hereby petitions, under the Revenue Act of 1936, for a hearing on the merits of its claim for the refund of processing tax on wheat, paid under the Agricultural Adjustment Act of May 12, 1933, as amended, together with interest thereon, and as a basis for this proceeding alleges, as follows:

1. Petitioner is a corporation organized and existing under the laws of the State of New York, with its principal office at Niagara Falls, New York.

2. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of, and processed, wheat under the name of Middleport Flour Mills, Inc., now Angelus Milling Company.

3. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner paid, or had paid for its account out of its own monies, to the Collector of Internal Revenue, Buffalo, New York, processing taxes on wheat, on account of processings of wheat by it, in the sum of $145,839.12.

4. On or about January 29, 1936, claims were filed on Form 843 by Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc., for the refund of processing taxes on wheat in the total sum of $454,045.27 (EXHIBITS A-1, 2 and 3 attached) paid on account of the processing of wheat by them.

5. After the passage of the Revenue Act of 1936, and prior

to January 1, 1940, Niagara Falls Milling Company filed a claim for the refund of processing tax in the sum of $436,231.73, with the Collector of Internal Revenue at Buffalo, New York, paid on account of the processing of wheat by it and by Angelus Milling Company, formerly Middleport Flour Mills, Inc. (EXHIBIT B attached)

6. After the passage of the Revenue Act of 1936, and prior to January 1, 1940, i. e. on or about August 16, 1938, Angelus Milling Company filed a claim for the refund of $145,839.12, paid by it, or for its account, out of its monies, on account of the processing of wheat by it, with the Collector at Buffalo, New York, designating this claim as "Amendment to Claim". (EXHIBIT C attached)

7. Under date of May 24, 1941, the Commissioner, in a letter sent by registered mail, disallowed the claim mentioned in paragraph 6, in its entirety. (EXHIBIT D attached)

8. The taxes involved are processing taxes paid on the first domestic processing of wheat. The amount in controversy is $145,839.12, plus interest.

9. Petitioner avers that in rejecting said claim for refund manifest error occurred and intervened to the prejudice of Petitioner who now assigns the following errors and each of them, which it avers occurred in the rejection of said claim for refund:

(a) The Commissioner erred in holding that Petitioner was not the taxpayer of any amount of tax in controversy.

(b) The Commissioner erred in failing to give consideration to, and the usual hearings on, Petitioner's claim.

(c) The Commissioner erred in holding that Petitioner failed to establish that it bore the burden of the tax, refund of which is claimed.

(d) The Commissioner erred in failing to hold that Petitioner established that it bore the burden of the tax, refund of which is claimed.

(e) The Commissioner erred in disallowing the refund of tax claimed.

(f) The Commissioner erred in failing to allow the refund of the tax claimed.

10. The facts upon which Petitioner relies as the basis of this proceeding are, as follows:

(a) All of the wheat processed by Petitioner during the period July 9, 1933, to January 6, 1936, both dates inclusive, was purchased for its account out of monies belonging to Petitioner by Niagara Falls Milling Company.

(b) All of the processing tax on wheat paid on account of the foregoing processing of wheat by Petitioner was paid for the account of Petitioner out of monies belonging to Petitioner by Niagara Falls Milling Company, or by it.

(c) Niagara Falls Milling Company and Middleport Flour Mills, Inc., now Angelus Milling Company, had common officers and a common bank account, where the monies belonging to each were commingled.

(d) Petitioner did not shift the burden of the processing tax on wheat in the selling price of the articles produced from the wheat involved in this proceeding, nor change the quantity of the wheat in any article, nor change the quality of any article in any manner whatsoever during the tax period, so that the tax was not recovered through inclusion thereof by Petitioner or any other person in the price of the articles produced from the wheat involved in this proceeding, nor did Petitioner shift the tax burden to the producer of wheat.

(e) Petitioner was not reimbursed on account of any part of the tax paid in the sum of $145,839.12.

(f) Petitioner was not relieved of the burden of the tax, nor did Petitioner shift such burden directly or indirectly in any manner whatsoever, including a shift or relief through the payment of rent, salaries, wages, advertising, but not limited thereto, nor was Petitioner relieved of the burden through cancellation of any mortgage, lease, contract, or otherwise, nor was the Petitioner relieved by reason of any extraordinary capital gains or through the sale of any article produced from any commodity other than wheat, nor was the Petitioner relieved by reason of any reduction in any excise tax or import duty, reduced by reason of the imposition of the processing tax on wheat, nor was there any understanding or agreement, written or oral, existing whereby Petitioner may be relieved of

the burden of such amount, be reimbursed therefor or may shift the burden thereof.

11. Petitioner desires that the hearing may be held in Washington, D. C.

WHEREFORE the Petitioner prays that this Board may hear the proceedings and that the Board may reverse the holding of the Commissioner, and order the refund of $145,839.12, together with interest thereon from the dates of payment thereof.

ANGELUS MILLING COMPANY,
R. A. O'CONNOR,
President.

State of New York
County of Niagara, SS:

R. A. O'CONNOR, being duly sworn, says that he is President of the Petitioner above named, that he has read the foregoing Petition and is familiar with the statements contained therein and that the facts set forth therein are true to the best of his information and belief.

R. A. O'CONNOR.

SUBSCRIBED and SWORN to before me this 18th day of August, 1941.

JOHN D. MAHONEY,
Notary Public.

EXHIBIT A-1

EXHIBIT A-1

Form 843
TREASURY DEPARTMENT
(Internal Revenue Service)
Revised June 1933

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

* The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

COLLECTOR'S STAMP
(Date stamped)

[X] REFUND OF TAX ILLEGALLY COLLECTED.
[ ] REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
[ ] ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

STATE OF New York
COUNTY OF Niagara } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc.

Business address 140 Market Street (Street) Lockport (City) New York (State)

Residence Branch office and factory at Middleport, New York

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed 29th District of New York
2. Period (if for income tax, make separate form for each taxable year) from July 31, 1933, to Dec. 30, 1933
3. Character of assessment or tax Processing Tax
4. Amount of assessment, $ $7,675.46 Date of payment various - See Schedule Attached
5. Date stamps were purchased from the Government
6. Amount to be refunded $7,675.46 $7,675.46
7. Amount to be abated (not applicable to income or estate taxes) $
8. The time within which this claim may be legally filed expires, under Section 16 of the Revenue Act of 1936, on August 26, 1938

The deponent verily believes that this claim should be allowed for the following reasons:

That the tax was illegally collected and in view of the United States Supreme Court's decision on the unconstitutionality of the A.A.A. that the exaction lacked the character of a true tax.

(Attach hereto other claims if space is not sufficient)

Sworn to and subscribed before me this

Signed

day of 193

(Signature of officer administering oath) (Title)

SEE INSTRUCTIONS ON REVERSE SIDE

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Claim No.

Character of assessment and period covered	Tax	Year	Month	Abstract No. or Page	Abstract No. or Line	Amount assessed	Date	Amount	Pg. Lb. Cr.
						$		$	

Payments Made to Collector of Internal Revenue at Buffalo, N. Y., for Taxes on Processing of Wheat

Niagara Falls Milling Co., Lockport, N. Y., from July 31, 1933 to December 30, 1933

July 31	$1,102.90
August 7	2,100.85
September 29	8,503.60
October 30	5,000.00
30	8,276.70
November 25	6,000.00
30	9,075.00
December 30	6,000.00
30	11,816.40
	$57,875.45

EXHIBIT A-2

Form 843
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised June 1930

CLAIM

A-2

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

COLLECTOR'S STAMP
(Date received)

[x] REFUND OF TAX ILLEGALLY COLLECTED.

[ ] REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.

[ ] ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

STATE OF New York }
COUNTY OF Niagara } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc.

Business address 140 Market Street (Number) Middleport. (Street) New York (State)

Residence Branch office and factory at Middleport, N.Y.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed 28th District of New York
2. Period (if for income tax, make separate form for each taxable year) from Jan. 29, 1936, to Dec. 31, 1936
3. Character of assessment or tax Processing Tax
4. Amount of assessment, $ 244,995.40; date of payment various - See Schedule attached
5. Date stamps were purchased from the Government
6. Amount to be refunded 244,995.40 $ 244,995.40
7. Amount to be abated (not applicable to income or estate taxes) $
8. The time within which this claim may be legally filed expires, under Section 15 of the Revenue Act of 1936, on August 24, 1936.

The deponent verily believes that this claim should be allowed for the following reasons:

That the tax was illegally collected and in view of the United States Supreme Court's decision on the unconstitutionality of the A.A.A. that the exaction lacked the character of a true tax.

(Attach brief statement of facts if space is not sufficient)

Sworn to and subscribed before me this ____ day of ____, 193__.

Signed ____

(Signature of officer administering oath) (Title)

SEE INSTRUCTIONS ON REVERSE SIDE

PRINT IS BAD

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Character of assessment and period covered	List	Year	Month	Assessment Nos. on		Amount assessed	Paid, Abated, or Overcharge		Remarks
				Page	Line		Date	Amount	
						$		$	
					Total	$		Total	$

Claim No. ____ Claim No. ____

I certify that the records of this office show the following facts as to the purchase of stamps:

To Whom Issue or Letter	Kind	Number	Denomination	Date of sale or issue	Amount	If spoiled or destroyed, return	
						Serial number	Period embracing
					$		

_____
Collector of Internal Revenue. (District)

Claim examined by—

Claim approved by—

Chief of Division.

COMMITTEE ON CLAIMS

Amount claimed... $..... .....

Amount allowed... $..... .....

Amount rejected... $..... .....

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Wherever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

Payments Made to Collector of Internal Revenue at Buffalo, N. Y., for Taxes on Processing of Wheat

Niagara Falls Milling Co., Lockport, N. Y., from January 29, 1934 to December 31, 1934

January 29	$6,000.00
29	11,682.30
March 2	6,000.00
2	14,058.40
31	5,000.00
31	18,440.60
April 30	4,000.00
30	2,000.00
30	16,728.00
May 31	4,000.00
June 1	13,077.60
30	16,861.20
30	3,583.60
July 30	17,000.00
30	3,925.70
August 30	16,000.00
30	4,522.60
September 29	11,000.00
29	10,116.60
October 31	15,000.00
31	6,571.40
November 30	13,000.00
30	8,426.20
December 31	11,000.00
31	6,901.20
	$244,895.40

EXHIBIT A-3

Exhibit A-3

Form 843
TREASURY DEPARTMENT
Internal Revenue Service
Revised June 1933

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

COLLECTOR'S STAMP
(Date received)

[X] REFUND OF TAX ILLEGALLY COLLECTED.

[ ] REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.

[ ] ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

STATE OF New York
COUNTY OF Niagara } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc

Business address 140 Market Street (Street) Lockport (City) New York (State)

Residence Branch office and factory at Middleport, N.Y.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed 23th District of New York
2. Period (*if for* income tax, make separate form for each taxable year) from January 30, 19 36, to Dec. 12, 19 36
3. Character of assessment or tax Processing Tax
4. Amount of assessment, $ 131,274.42; date of payment various - See Schedule Attached
5. Date stamps were purchased from the Government
6. Amount to be refunded $131,274.42
7. Amount to be abated (not applicable to income or estate taxes) $
8. The time within which this claim may be legally filed expires, under Section 15 of the Revenue Act of 19 36, on August 24, 19 36

The deponent verily believes that this claim should be allowed for the following reasons:

That the tax was illegally collected and in view of the United States Supreme Court's decision on the unconstitutionality of the A.A.A. that the exaction lacked the character of a true tax.

(Affiant's home address if agent is not employee)

Sworn to and subscribed before me this ____ day of ____, 193__

Signed ____

(Signature of officer administering oath) (Title)

SEE INSTRUCTIONS ON REVERSE SIDE

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Character of assessment and period covered	List	Year	Month	Assessed No. on Page	Assessed No. on Line	Amount assessed	Paid, Amount, or Unassessed Date	Paid, Amount, or Unassessed Amount	Rec'd
						$		$	
					Total,	$		Total,	$

Claim No.

Claim No.

I certify that the records of this office show the following facts as to the purchase of stamps:

No. Where Issue or Sales	Class	Number	Denomination	Date of sale or issue	Amount	If spoiled or unused, stamps: Serial number	Period embraced
					$		

Collector of Internal Revenue. (District)

Claim approved by —

Claim approved by —

Chief of Bureau

COMMITTEE ON CLAIMS

Amount claimed... $

Amount allowed... $

Amount rejected... $

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be attached to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If no executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

2/1/41

Payments Made to Collector of Internal Revenue at Buffalo, N. Y., for Taxes on Processing of Wheat

Niagara Falls Milling Co., Lockport, N. Y., from January 30, 1935 to December 12, 1935

January 30	$9,000.00
30	12,245.40
March 4	12,000.00
1	3,931.49
30	10,000.00
30	4,000.00
May 3	10,000.00
3	3,433.60
31	3,884.40
31	3,985.50
31	7,066.80
June 30	10,765.20
July 15	3,000.00
August 20	3,060.00
September 30	4,596.45
30	2,707.73
30	3,016.80
October 30	4,926.98
November 2	7,750.20
30	8,713.27
December 12	3,250.60
	$131,274.42

EXHIBIT "B"

P. T. Form 70
TREASURY DEPARTMENT
Internal Revenue Service

READ AND FOLLOW INSTRUCTIONS CAREFULLY

File claim on or before June 30, 1937, with collector of internal revenue. If not received after that date, not to be allowed later than July 30, 1937.

CLAIM FOR REFUND
(Under Title VII, Revenue Act of 1936)
OF
PROCESSING TAX
PAID UNDER THE PROVISIONS OF
THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

EXHIBIT "B"

DATE RECEIVED BY COLLECTOR (STAMP BELOW)

Name of claimant NIAGARA FALLS MILLING COMPANY

(Type or print name and address)

Address 150 MARKET STREET
(Number and street or route)

LOCKPORT, NEW YORK
(City or town) (State)

(1) Commodity (specify whether "processed" or "floor stock")	(2) Amount of floor stocks or processing tax paid by claimant and not refunded or credited	(3) Amount of processing tax refund on last unsuccessfully repaid or voided	(4) Amount of refund claimed (Sum of columns 2 and 3)	(5) For use of Bureau
	Dollars / Cents	Dollars / Cents	Dollars / Cents	
Wheels	436,231 73		436,231 73	

I swear (or affirm) with respect to this claim and the schedules and other evidence submitted as a part thereof:

1. That the amount and date of each payment of processing tax on the processing of the commodity named above as shown in Schedule A are true and correct;
2. That the amounts of processing tax on the processing of the commodity named above, heretofore refunded or credited to claimant as shown in Schedule B, are the total amounts of such refunds and credits;
3. That the amounts of processing tax on the processing of the commodity named above, heretofore refunded or credited to other persons as shown in Schedule C, are the total amounts of such refunds and credits of which claimant has any knowledge;
4. (a) That the amount of the burden of the processing tax on the processing of the commodity named above which was borne by the claimant as set forth in column 2 above is true and correct; that the claimant has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article processed from such commodity; (2) through reduction of the price paid for such commodity; or (3) in any manner whatsoever, and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; and (b) that the data and statements submitted in and made a part of Schedule D are true and correct;
5. That the amounts of processing tax shown in column 3 and Schedule E as having been passed on and repaid were unconditionally repaid to vendees, each of whom has furnished evidence which is attached showing that he has borne the burden thereof, has not been relieved thereof, nor reimbursed therefor, and has not shifted such burden, directly or indirectly, and is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever;
6. That no other claim has been filed by claimant on P. T. Form 70 for refund of any part of the amount of this claim;
7. That the claimant is entitled to and demands payment of the claim in the amount shown above.

Subscribed and sworn to before me this ..... (Name of claimant)

[NOTARIAL SEAL] ..... day of ....., 193... .....

(Signature of officer administering oath) (Title) (Where executed (e.g., city or town, county, and State), and if officer of corporation or duly authorized manager or agent, give title)

Section 35, United States Criminal Code, as amended, provides a fine of $10,000 or 10 years imprisonment, or both, for the filing of a false claim, for making of a false statement in an affidavit, or for falsifying, concealing, or covering up by any trick, scheme, or device, a material fact in connection with a claim.

Claimed, $ ..... Examined by .....

Allowed, $ ..... Approved ..... (Chief of division)

Rejected, $ ..... , 19...

[1] The term "processing tax" means any tax or exaction denominated a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid or collected as tax with respect to the processing of a commodity for a customer for a charge or fee. Any claim for refund of amounts paid as tax on the processing of that quantity of a commodity which was processed for a customer for a charge or fee shall be filed on P. T. Form 70.

[2] See par. 3 of instructions.

*Filed with Collector of Revenue[2], Buffalo, N. Y., [illegible]

SCHEDULE A.—PROCESSING TAX PAYMENTS BY CLAIMANT TO COLLECTOR OF INTERNAL REVENUE

Item No.	Month and year for which tax was paid	Amount of payment for item 1 (column 2) for which claim is filed (see instruction 9)	Amount of each payment made on account of the total payments of column 3 for the month	Penalty	Interest	Date of each payment	District in which paid	FOR COLLECTOR'S USE—CERTIFICATE: Date	Amount	Volume: List	Volume: Page	Volume: L.
		Annual				1933						
1.	July	15,604.85	2100.85			aug 2	Buffalo					
			13503.60			Sept 29						
			500.00			Oct 30						
			15,604.85									
2.	Aug	19,276.20	9,276.20			Oct 31						
			4,000.00			Nov 25						
			13,276.20									
3.	Sept	15,025.00	9025.00			Nov 30						
			6000.00			Dec 2						
			15,025.00									
4.	Oct	17,816.40	11,816.40			Dec 30						
			6000.00			1934 Jan 29						
			17,816.40									
5.	Nov	17,682.30	14,682.30			Jan 29						
			3,000.00			Mar 2						
			17,682.30									
6.	Dec	19,057.40	16,057.40			Mar 2						
			3,000.00			Mar 31						
			19,057.40									
7.	Jan	22,440.06	13,440.06			Mar 31						
			9,000.00			Apr 28						
			22,440.06									
8.	Feb	22,738.00	2,000.00			Apr 30						
			16,738.00			30						
			4,000.00			May 1						
			22,738.00									
9.	Mar	13,077.66	1,330.72			June 1						
10.	Apr	16,341.32	13,761.32			30						
11.	May	24,573.60	3,573.60			30						
			12,000.00			July 30						
			20,573.60									
12.	June	19,925.72	3,925.72			July 30						
			16,000.00			Aug 30						
			19,925.72									

[1] See par. 9 (b) of instructions.

[2] Enter each of several payments for the same month on successive lines; and show the total of all such payments for a single month immediately below the entry of the amount of the last of such payments.

SCHEDULE B.—PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, CLAIMANT

(Enter item numbers in same order as shown in Schedule A; make all entries relating to a particular item on consecutive lines; state separately amount of each credit and of each refund claim allowed)

PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, CLAIMANT

Item number of claim (Schedule A)	Claims				Refunds		Total refunds and credits	Per cent of Item
	Form No.	Month	Year	Amount	Date received	Amount		
				$		$	$	

SCHEDULE C.—PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, PERSONS OTHER THAN CLAIMANT

(Enter item numbers in same order as shown in Schedule A; make all entries relating to a particular item on consecutive lines; state separately amount of each credit and of each refund claim allowed)

PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, PERSONS OTHER THAN CLAIMANT

Item number of claim (Schedule A)	Name and address of each person to whom tax was refunded, or by whom credit was taken	Claims				Refunds		Per cent of Item
		Form No.	Month	Year	Amount	Date received	Amount	
					$		$	

SCHEDULE D—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN

(a) AVERAGE MARGIN FOR THE TAX PERIOD

(Claimant must show as to each month of the tax period the data required in columns 2 to 7, inclusive. Such data shall be shown only with respect to that quantity of the commodity as to which the claimant paid processing tax to the collector of internal revenue. See also para. 7 (a), (f) and 9 (c) also 7 (b) (4) of instructions on this form.)

(1) Month (or portion thereof, such period and year)	(2) Gross sales value of all articles processed from the commodity	(3) Cost of the commodity processed during month	(4) Amount of tax paid on account of such commodity (Col. 3 x rate)	(5) Total of columns 3 and 4	(6) Margin (Amount in column 2 less amount in column 5)	(7) Total number of units of the commodity processed during month	(8) Per cent of Business
m3	Jan. Carryover	Schedule D-2					
July	79134.96	32396.53	15699.97	48096.49	31038.47	52019	
Aug	79072.40	30163.05	14376.76	44539.76	34532.64	47659	
Sept	73231.60	25269.30	12496.00	40399.32	32832.28	50250	
Oct	73036.55	28661.13	13916.49	42577.62	30458.93	53258	
Nov	142752.32	46839.39	19682.36	66520.19	76232.13	68991	
Dec	101838.00	62123.92	19655.96	81779.88	20058.12	63528	
1934 Jan.	96509.89	59976.39	23940.06	83916.45	12593.44	74800	
Feb	100596.00	59009.61	22925.09	81934.70	18661.30	65760	
March	29441.96	58329.69	13097.60	71427.29	(41985.33)	43692	
April	101702.14	60102.49	16861.20	76963.69	24738.45	56209	
May	113013.09	58376.98	20583.60	78960.58	34052.51	68612	
June	106704.00	59616.18	19326.70	78942.88	27761.12	66419	
July	109859.02	59599.96	15682.00	75281.96	34577.06	51992	
Aug	84959.24	92410.76	25116.60	117527.36	(32568.12)	53782	
Sept	99166.02	53241.88	19571.90	72813.78	26352.24	65338	
Oct	111113.52	55509.94	19936.20	75446.14	35667.38	64769	
Nov	103396.08	59458.33	17891.20	77349.53	26046.55	53008	
Dec	115303.02	58951.91	24295.90	83247.81	32055.21	80814	
1935 Jan	99124.00	66216.30	17931.49	84147.79	14976.21	59791	
Feb	71296.48	65986.29	19933.60	85919.89	(14623.41)	58112	
March	36936.68	66255.96	11052.32	77308.28	(40371.60)	36841	
April	63926.48	60506.74	16762.50	77269.24	(13342.76)	55896	
May	83952.56	56824.20	13385.80	70210.00	13742.56	61256	
June	54352.48	66176.91	10830.96	77007.87	(22655.39)	36103	
July	66263.66	44366.66	12009.20	56433.86	9829.80	40224	
Aug	106639.74	109998.92	19907.92	129702.84	(23062.10)	65943	
Sept	161312.36	123196.93	31000.80	154197.73	7114.72	103,336	
Oct	147994.80	115921.99	30072.87	145994.86	2170.94	116,196	
Nov.	116682.88	123669.35	24873.96	148543.31	(31860.43)	81,913	
Dec. 1935	95419.82	125097.16	20035.70	145132.86	9713.23	67019	
Jan 1936	20951.35	19091.61	2996.85	22087.46	1135.91	9319	
	2,513,235.19	2,048,516.24	513,949.96	2,562,466.20	- 141,965.52	1,704,641	

The average margin[1] for the tax period per _____ (Unit of the commodity) was $ 1.5034

[1] The average margin for the tax period shall be ascertained by dividing the total of the margins for the period (total of column 6) by the total number of units of the commodity processed during the period (total of column 7).

[2] The term "unit of commodity" is defined in par. 9 (f) of instructions.

(4)

No. 2

Schedule A—Processing Tax Payment by Claimant to Collector of Internal Revenue

1934				1934
13 July	15,522.60	4,522.60	Aug.	30
		11,000.00	Sept.	29
		15,522.60		
14 Aug.	25,116.60	10,116.60	Sept.	29
		15,000.00	Oct.	31
		25,116.60		
15. Sept.	19,571.40	6,571.40	Oct.	31
		13,000.00	Nov.	30
		19,571.40		
16 Oct.	19,426.20	8,426.20	Nov.	30
		11,000.00	Dec.	31
		19,426.20		
17 Nov.	15,901.20	6,901.20	Dec.	31
			1935	
		9,000.00	Jan.	30
		15,901.20		
18 Dec.	24,245.40	12,245.40	Jan.	30
		12,000.00	Mar.	4
		24,245.40		
1935				
19 Jan.	17,931.44	3,931.44	Mar.	1
		10,000.00		30
		4,000.00		30
		17,931.44		
20 Feb.	17,433.60	10,000.00	May	3
		3,433.60		3
		3,884.40		31
		17,433.60		

21 Mar.	11,052.30	7,066.80		31
		3,985.50		31
		11,052.30		
22 Apr.	16,762.80	10,765.20	June	30
		3,000.00	July	15
		13,765.20		
No. 3				
23 May	18,385.80	3,000.00	Aug.	20
		4,596.45	Sept.	30
		7,596.45		
24 June	10,830.90	2,707.73		30
25 July	12,067.20	3,016.80		30
26 Aug.	19,707.92	4,926.98	Oct.	30
27 Sept.	31,000.80	7,750.20	Nov.	12
		3,250.60	Dec.	12
		11,000.80		
28 Oct.	34,852.87	8,713.27	Nov.	30
29 Nov.	24,573.90	3,173.90	Dec.	31
30 Dec.	20,105.70			
		436,231.73		

SCHEDULE D.—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS—Con.

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN—Continued

(3) AVERAGE MARGIN FOR THE PERIOD BEFORE AND AFTER THE TAX

(Claimant must show as to each month of the period before and after the tax the data required in columns 2 to 6, inclusive. See also para. 7 (3) (f) and 9 (1) also 7 (3) (j) of instructions on this form)

(1) Month (Or portion thereof, state periods and year)	(2) Gross sales value of all articles produced from commodity	(3) Cost of commodity processed during month	(4) Margin (Amount in column 2 less amount in column 3)	(5) Total number of units of the commodity processed during month	(6) Tax rate of Burden
1933	Schedule D-2				
July	$ 59595.64	$ 31239.22	$ 28369.90	66205	
Aug	59910.14	34326.22	25583.92	56999	
Sept	42113.10	24659.09	17454.01	42195	
Oct	59269.20	29360.99	29909.21	52930	
Nov	46852.24	27520.51	19331.73	48116	
Dec	46759.23	28821.96	17937.27	44832	
1934					
Jan	49651.98	30969.08	18682.62	46611	
Feb	54409.95	33623.22	20786.73	51319	
March	24119.80	16520.30	7599.50	24117	
April	61805.04	35624.94	26180.30	63038	
May	53119.38	32005.54	21113.84	51898	
June	59710.94	34936.95	24994.35	63454	
July	46389.66	24165.19	22224.47	49938	
Aug	40919.26	29814.36	11105.81	40918	
Sept	63403.20	30941.95	32561.25	69441	
Oct	65250.45	38489.93	26762.93	72326	
Nov	55904.16	34929.06	21125.10	63039	
Dec	59924.60	33583.35	26341.65	65412	
1935					
Jan	53137.93	29826.61	23311.31	59918	
Feb	57270.00	23284.50	33985.20	63280	
March	16816.50	15055.36	1761.14	69581	
April	39960.04	34324.54	39635.50	65698	
May	74384.44	46196.92	28207.91	64901	
June	86112.00	51690.88	34421.12	66290	
1936					
February	118869.32	117242.35	1626.97	166253	
March	116291.78	115585.29	706.51	105292	
April	94604.34	91922.92	2681.38	88092	
May	88089.16	74919.29	13169.99	66810	
June	96441.46	89933.61	6552.45	79850	
July	118395.20	109900.65	8584.55	88981	
Totals	1,967,669.22	1,351,126.16	616,543.06	1,881,299	

The average margin [1] for the period before and after the tax per Pound (Unit of measurement) was $ .32477

[1] The average margin for the period before and after the tax shall be ascertained by dividing the total of the margins for the period (total of column 4) by the total number of units of the commodity processed during the period (total of column 5).

[2] The term "unit of commodity" is defined in par. 9 (f) of instructions.

SCHEDULE D.—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS—Con.

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN—Continued

(c) CALCULATION OF AMOUNT AS INDICATED BY THE EVIDENCE AS TO MARGINS

(1) Average margin per unit of commodity processed on the portion hereof on which the tax (As shown by Schedule D-1-(b))	(2) Average margin per unit of commodity processed for the tax (As shown by Schedule D-1-(a))	(3) Amount by which average margin for the period shown and upon the tax exceeds the average margin for the tax period (Column 1 minus column 2)	(4) Total number of units of commodity processed during the period with respect to which processing tax was paid (As shown by Schedule D-1-(a))	(5) Amount of the burden borne by claimant and not shifted to others (Column 3 multiplied by column 4)
a .3277 per Bu. (Unit of commodity)	$ .2744 per Bu. (Unit of commodity)	$ .2533 per Bu. (Unit of commodity)	54,7040 Bu. (Unit of commodity)	$ 155,633.06

(Claimant must approve either A or B below and strike out the one not applicable)

Balance Carried Forward and Paid — 132,777.96
Balance 22,855.10

A. The amount shown in column 5 above, namely, $ _____, is the correct amount of the processing tax paid by claimant and not shifted to others. (If claimant agrees that this figure is correct any additional facts and evidence in support thereof should be set out and made a part of Schedule D-2.)

B. The amount shown in column 5 above is not the correct amount of the processing tax paid by claimant and not shifted to others. The correct amount is $ 43.6,2 31.27 for the reasons and upon the evidence set out and made a part of Schedule D-2.

D-2. OTHER EVIDENCE

(Claimant shall list below each document, exhibit, statement of facts, and other evidence submitted with and made a part of this schedule in support of the showing as to margins, or in rebuttal thereof and tending to establish that he bore the burden of the tax. See also para. 7 (a) and 7 (d) of instructions.)

The gross Sales value of Wheat processed as shown in Schedule D a and D-1 is the averare cost price. Actual sale prices were substantially lower than cost prices to such an extent that the actual sales value realized was much lower than that shown.

It has not been possible to complete the compilation of sales data necessary to show actual sales value, price to due date on this claim, the claimant is proceeding to complete this data and believes it will show an actual sales value so much less than that average cost price as to demonstrate that none of the processing taxes paid were passed on to vendees.

SCHEDULE B.—PROCESSING TAX UNCONSTITUTIONALLY REPAID TO CLAIMANT'S VENDEES
(The total amount repaid as shown by this schedule should be entered in column 2 on face of the claim)

Item no. (person's name as entered under item 1 on face of claim)	Persons to Whom Processing Tax Was Unconstitutionally Repaid, and Who Have not Repaid or Been Tax Credited, or required to promptly File a Refund Claim			
	Name	Address	Date of the payment	Amount
				$

INSTRUCTIONS
(See also Chapters II and VI of Regulations 92)

1. The law.—Title VII of the Revenue Act of 1936 provides, in part, as follows:

(a) That the burden of proof in any proceeding instituted in the Court of Claims or in the district courts of the United States for the recovery of any amount paid by the claimant as a tax under the Agricultural Adjustment Act, as amended, shall be upon the claimant if (1) the claimant has not filed a claim for refund of such amount prior to the date of the enactment of this Act [August 24, 1936], in accordance with the regulations prescribed by the Commissioner of Internal Revenue, or (2) the claimant has not paid such amount to the vendee of a manufacturer or producer with whom the claimant has entered into an agreement specifically providing for the payment by the claimant of such amount to such vendee;

(b) That no refund shall be made of such amount and less not been refunded directly or indirectly to the claimant or the vendee of such manufacturer or producer, (1) through the inclusion of such amount in the price of the articles with respect to which such amount was imposed, or of any other articles processed from such articles, or (2) through the shifting of such amount to the vendee of such manufacturer or producer, or (3) through the absorption of such amount by such vendee, or (4) through reimbursement to such vendee by any other person in the business relationship between such vendee and the claimant, or (5) through the application of such amount against the amount payable by such vendee to such manufacturer or producer pursuant to such agreement, or (6) otherwise, unless the claimant establishes to the satisfaction of the Commissioner that the loss to the claimant resulting from the imposition of such amount was not reduced through any of the circumstances described in clauses (1) to (6), inclusive, of this subsection;

(c) That no refund shall be made of such amount to any vendee (1) who have the burden of proof in any proceeding instituted in the Court of Claims or in the district courts of the United States for the recovery of any amount paid by the claimant as a tax under the Agricultural Adjustment Act, as amended, shall be upon the claimant if (1) the claimant has not filed a claim for refund of such amount prior to the date of the enactment of this Act [August 24, 1936], in accordance with the regulations prescribed by the Commissioner of Internal Revenue, or (2) the claimant has not paid such amount to the vendee of a manufacturer or producer with whom the claimant has entered into an agreement specifically providing for the payment by the claimant of such amount to such vendee;

(b) That no refund shall be made of such amount if and to the extent that it is established that the burden of such amount has been borne by any other person, or has

...

...

...

EXHIBIT "C"

AMENDMENT TO CLAIM

CLAIM FOR REFUND

(Under Title VII, Revenue Act of 1936)

OF

PROCESSING TAX[1]

PAID UNDER THE PROVISIONS OF

THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

EXHIBIT "C"

Name of claimant ANGLO MILLING COMPANY

(Type or print name and address)

Address 702 TRUST CO., BUILDING

NIAGARA FALLS, NEW YORK

(a) Name, residence[2] (number and street, city, state, customs district, or other post office) of vendor	(b) Amount of burden of processing tax borne by the claimant and not shifted as set forth in Schedule B	(c) Amount of burden of processing tax borne by claimant and not shifted as set forth in Schedule B	(d) Amount of refund claimed (Item 2 of Schedule A)	(e)
	Dollars / Cents	Dollars / Cents	Dollars / Cents	
Total	145,830 12		145,830 12	

I swear (or affirm) with respect to this claim and the schedules and other evidence submitted as a part thereof:

1. That the amount and date of each payment of processing tax on the processing of the commodity named above as shown in Schedule A are true and correct;
2. That the amounts of processing tax on the processing of the commodity named above, heretofore refunded or credited to claimant as shown in Schedule B, are the total amounts of such refunds and credits;
3. That the amounts of processing tax on the processing of the commodity named above, heretofore refunded or credited to other persons as shown in Schedule C, are the total amounts of such refunds and credits of which claimant has any knowledge;
4. (*) That the amount of the burden of the processing tax on the processing of the commodity named above which was borne by the claimant as set forth in column 2 above is true and correct; that the claimant has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article processed from such commodity; (2) through reduction of the price paid for such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; and (5) that the data and statements submitted in and made a part of Schedule D are true and correct;
5. That the amounts of processing tax shown in column 3 and Schedule E as having been passed on and repaid were unconditionally repaid to vendees, each of whom has furnished evidence which is attached showing that he has borne the burden thereof, has not been relieved thereof, nor reimbursed therefor, and has not shifted such burden, directly or indirectly, and is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever;
6. That no other claim has been filed by claimant on P. T. Form 79 for refund of any part of the amount of this claim;
7. That the claimant is entitled to and demands payment of this claim in the amount shown above.

Subscribed and sworn to before me this

[NOTARIAL SEAL] 15th day of August 1938

Emily T. Miller Notary

(Signature and official capacity)

(Title)

Anglo Milling Company

(Name of claimant)

Harry M. Richings

(Signature of person executing claim)

President

(State whether individual owner, member of firm, or officer of corporation or duly authorized manager or agent, give title)

Section 35, United States Criminal Code, as amended, provides a fine of $10,000 or 10 years imprisonment, or both, for the filing of a false claim, for making of a false statement in an affidavit, or for falsifying, concealing, or covering up by any trick, scheme, or device, a material fact in connection with a claim.

Claimed, $ —

Allowed, $ —

Rejected, $ —

Examined by —

Approved —

(Head of division)

—, 19—

[1] The term "processing tax" means any tax or exaction characterized a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid or collected as tax with respect to the processing of a commodity for a customer for a charge or fee. Any claim for refund of amounts paid as tax on the processing of that quantity of a commodity which was processed for a customer for a charge or fee shall be filed on P. T. Form 72.

[2] See par. 3 of instructions.

25 1/2

SCHEDULE A.—PROCESSING TAX PAYMENTS BY CLAIMANT TO COLLECTOR OF INTERNAL REVENUE.

Item No.	Month and year for which tax was paid	Amount of payment for basic unit on which tax was paid, and rate of tax per unit	Amount of such payment on which tax was paid, and rate of tax per unit	Penalty	Interest	Date of such payment	Stamps to which affixed	FOR COLLECTOR'S USE—CERTIFICATE (Collector)				
								Paid		Accepted		
								Amount	Date	List	Page	L.
	Mo.	$	$	$	$			$				

Allocation of Refund Due Niagara Falls Milling Company and Middleport Flour Mills Inc.
(Now Angelus Milling Co., Inc.)

Schedule A

Period	Sales of Flour N. F. Milling Co.		Sales of Flour Angelus Milling Co.		Total Sales		Percentage Applicable to Angelus Milling Co.	Refund Due Angelus Milling
	Value	Barrels	Value	Barrels	Value	Barrels		
July 1 to Dec. 31, 1933	$337,383.26	53,981	$165,563.99	26,490	$502,947.25	80,471	32.9	$19,041.02
Year 1934	920,537.20	147,286	499,535.63	79,927	1,420,072.83	227,213	35.2	84,133.91
Year 1935	1,062,586.14	170,000	510,555.46	81,688	1,573,141.60	251,688	32.5	42,664.19
	$2,320,506.60	371,267	$1,175,655.08	188,105	$3,496,161.68	559,372	33.6	$145,839.12

Period	Processing Taxes Paid	N. F. Milling Co.	Angelus Milling Co.
July 1, to Dec. 31, 1938	$57,875.45	$38,834.43	$19,041.02
Year 1934	244,895.40	160,761.49	84,133.91
Year 1935	131,274.42	88,610.23	42,664.19
	$434,045.27	$288,206.15	$145,839.12

State of New York
County of Niagara, SS:

The within claim for refund was originally filed on the 22nd day of June 1936 in the name of the Niagara Falls Milling Company and/or Middleport Flour Mills, Inc. The name of Middleport Flour Mills Inc. was changed by permission of the Secretary of State at Albany, N. Y. to Middleport Flour Mills Inc. Originally the claim in the name of both Companies was for the sum of $434,045.27.

The amount to be allocated to the Angelus Milling Company is $145,839.12 and the amount to be allocated to the Niagara Falls Milling Company is $288,206.15.

Since the filing of said claim, the Niagara Falls Milling Company was adjudicated a bankrupt on the 21st day of March, 1938. Since said date the claim of the Niagara Falls Milling Company, Inc. and the Angelus Milling Company, Inc. was handled by the same personnel, both companies having had the same officers and approximately the same directors The Angelus Milling Company, Inc. at the present time is not bankrupt and this amended claim is presented solely on behalf of the Angelus Milling Company, Inc. and request is hereby made that the amount of refund due the Angelus Milling Company, Inc. be determined and paid to it as a separate entity and that said claim be not commingled with the claim of the Niagara Falls Milling Company. The within claim has been prepared from certain records of the two companies and is based on data as shown by the attached Schedule A.

ANGELUS MILLING COMPANY, INC.,

By _____,
President

Subscribed and sworn to before me this —— day of August, 1938.

_____
Notary Public

SCHEDULE B.—PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, CLAIMANT

(Enter item numbers in same order as shown in Schedule A; make all entries relating to a particular item on consecutive lines; state separately amount of each credit and of each refund claim allowed)

PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, CLAIMANT

Item number (check mark (✓) if credit or refund of entire item made), by item number, in Schedule A	Claims				Refunds		Total refunds and credits	Per use of Bureau
	Taken on U. S. return			Amount	Date received	Amount		
	Form No.	Month	Year					
				$		$	$	

SCHEDULE C.—PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, PERSONS OTHER THAN CLAIMANT

(Enter item numbers in same order as shown in Schedule A; make all entries relating to a particular item on consecutive lines; state separately amount of each credit and of each refund claim allowed)

PROCESSING TAX REFUNDED TO, OR FOR WHICH CREDIT HAS BEEN TAKEN BY, PERSONS OTHER THAN CLAIMANT

Item number (check mark (✓) if credit or refund of entire item made), by item number in Schedule A	Name and address of each person to whom tax was refunded, or by whom credit was taken	Claims				Refunds		Per use of Bureau
		Taken on U. S. return			Amount	Date received	Amount	
		Form No.	Month	Year				
					$		$	

(B)

SCHEDULE D.—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN

(a). AVERAGE MARGIN FOR THE TAX PERIOD

(Claimant must show as to each month of the tax period the data required in columns 2 to 7, inclusive. Such data shall be shown only with respect to that quantity of the commodity as to which the claimant paid processing tax to the collector of internal revenue. See also para. 7 (a) (f), and 9 (a) also 7 (b) (4) of instructions on this form.) 29

(1) Month (Or portion thereof) with respect to which data are given	(2) Gross sale value of all articles processed from the commodity	(3) Cost of the commodity processed during month	(4) Amount of tax paid on processing of such commodity	(5) Total of columns 3 and 4	(6) Inclusive (Adjustment to columns 3 but entered in column 5)	(7) Total number of units of the commodity processed during month	(8) Per unit of Measure.
1935.							
	$	$	$	$	$		

SCHEDULE D.—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS—Con.

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN—Continued

(b) AVERAGE MARGIN FOR THE PERIOD BEFORE AND AFTER THE TAX

(Claimant must show as to each month of the period before and after the tax the data required in columns 2 to 6, inclusive. See also para. 7 (i) (2) and 9 (c) also 7 (j) (4) of instructions on this form)

(1) Month (Or portion thereof) during period and year	(2) Gross sales value of all articles processed from commodity	(3) Cost of commodity processed during month	(4) Margin (4 minus 3) (Amount in column 2 less amount in column 3)	(5) Total number of units of the commodity processed during month	(6) Per unit of Bureau
193...					
	$	$	$		

SCHEDULE D.—BURDEN OF PROCESSING TAX PAID BORNE BY CLAIMANT AND NOT SHIFTED TO OTHER PERSONS—Con.

D-1. PRIMA FACIE SHOWING WITH RESPECT TO TAX BURDEN—Continued

(c) CALCULATION OF AMOUNT AS INDICATED BY THE EVIDENCE AS TO MARGINS

(1)	(2)	(3)	(4)	(5)
Average margin per unit of commodity processed by the period before and after the tax (As shown by Schedule D-1-(b))	Average margin per unit of commodity processed for the tax period (As shown by Schedule D-1-(a))	Amount by which average margin for the period before and after the tax exceeds the average margin for the tax period (Column 1 minus column 2)	Total number of units of commodity processed during tax period with respect to which processing tax was paid (As shown by Schedule D-1-(a))	Amount of tax burden borne by claimant and not shifted to others as indicated by margin evidence (Column 3 multiplied by column 4)
$..... per ..... (Unit of commodity)	$..... per ..... (Unit of commodity)	$..... per ..... (Unit of commodity)	..... (Unit of commodity)	$ .....

(Claimant must complete either A or B below and strike out the one not applicable)

A. The amount shown in column 5 above, namely, $..... is the correct amount of the processing tax paid by claimant and not shifted to others. (If claimant agrees that this figure is correct any additional facts and evidence in support thereof should be set out and made a part of Schedule D-2.)

B. The amount shown in column 5 above is not the correct amount of the processing tax paid by claimant and not shifted to others. The correct amount is $....., for the reasons and upon the evidence set out and made a part of Schedule D-2.

D-2. OTHER EVIDENCE

(Claimant shall list below each document, exhibit, statement of facts, and other evidence submitted with and made a part of this schedule in support of the showing as to margins, or in rebuttal thereof and tending to establish that he bore the burden of the tax. See also para. 7 (a) and 7 (c) of instructions.)

SCHEDULE E—PROCESSING TAX UNCONDITIONALLY REPAID TO CLAIMANT'S VENDEES

(The total amount repaid as shown by this schedule should be entered in column 3 on face of the claim)

Show the payment to which each repayment relates, by item number in Schedule A	Vendees to Whom Processing Tax Was Unconditionally Repaid, and Who Bore the Burden of Such Tax (If unknown, as required in paragraph 9 (b) of Instructions, so indicated herein)			
	Name	Address	Date of re payment	Amount
				$

INSTRUCTIONS

(See also Chapters III and VI of Regulations 96)

1. The law.—Title VII of the Revenue Act of 1936 provides, in part, as follows:

[illegible]

(f)

PRINT IS BAD

INSTRUCTIONS—Continued

EXHIBIT "D"

TREASURY DEPARTMENT
WASHINGTON

Office of
Commissioner of Internal
Revenue

May 23, 1941.

Angelus Milling Company,
702 Trust Company Building,
Niagara Falls, New York.

In re: Claim No. F-10130
Amount: $145,839.12

Sirs:

Reference is made to the above-mentioned claim for refund of tax stated to have been paid under the provisions of the Agricultural Adjustment Act.

The benefits of Title VII of the Revenue Act of 1936 extend only to the taxpayer or to persons who have acquired the rights of the taxpayer by some assignment effected by operation of law. Since the amount for which refund is claimed was not paid to the Government as tax by you, there is no authority in law whereby your claim may be considered.

Furthermore, your claim does not contain margins computed in accordance with section 907 of the Revenue Act of 1936 and Article 605 of Regulations 96, nor has any other evidence been submitted establishing that you bore the burden of the tax as required by section 902 of the Act and Article 609 of Regulations 96. Hence, you have not filed a true and complete claim in accordance with the requirements of section 903 of the Act and the regulations promulgated pursuant thereto.

Since you did not pay the tax, refund of which is claimed, to the Government and you have not filed a true and complete claim in accordance with the requirements of Title VII of the Revenue Act of 1936, your claim is hereby disallowed in full.

The disallowance of your claim will become final upon the expiration of three months after the date of the mailing of this letter, unless within such period you have filed a petition

with the United States Processing Tax Board of Review, Munsey Building, Washington, D. C., for a hearing on the merits of the claim.

Respectfully,

GUY T. HELVERING,
Commissioner,

By _____,
Acting Deputy Commissioner.

FILED
12:15 P. M.
Oct. 4, 1941
United States Processing
Tax Board of Review
R

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 398

MOTION FOR BETTER STATEMENT OF CLAIM

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and moves that an order be entered pursuant to Rule 14 of the Rules of Practice before the United States Processing Tax Board of Review (Second Edition) requiring the petitioner in the above-entitled proceeding to make a further and better statement of the nature of its purported claim for refund by setting forth in detail an explanation of the following apparent inconsistencies, contradictions, and ambiguities appearing in the petition and its accompanying exhibits in the following particulars, to wit:

The pertinent paragraphs in question of the petition herein are as follows:

> "2. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of, and processed, wheat under the name of Middleport Flour Mills, Inc., now Angelus Milling Company.
>
> "3. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner paid, or had paid for its account out of its own monies, to the Collector of Internal Revenue, Buffalo, New York, processing taxes on wheat,

on account of processings of wheat by it, in the sum of $145,839.12.

"On or about January 29, 1936, claims were filed on Form 843 by Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc., for the refund of processing taxes on wheat in the total sum of $454,045.27 (EXHIBITS A-1, 2 and 3 attached) paid on account of the processing of wheat by them.

"5. After the passage of the Revenue Act of 1936, and prior to January 1, 1940, Niagara Falls Milling Company filed a claim for the refund of processing tax in the sum of $436,231.73, with the Collector of Internal Revenue at Buffalo, New York, paid on account of the processing of wheat by it and by Angelus Milling Company, formerly Middleport Flour Mills, Inc. (EXHIBIT B attached)

"6. After the passage of the Revenue Act of 1936, and prior to January 1, 1940, i. e. on or about August 15, 1938, Angelus Milling Company filed a claim for the refund of $145,839.12, paid by it, or for its account out of its monies, on account of the processing of wheat by it, with the Collector at Buffalo, New York, designating this claim as 'Amendment to Claim.' (EXHIBIT C attached)

* * * * *

"10. The facts upon which petitioner relies as the basis of this proceeding are, as follows:

"(a) All of the wheat processed by Petitioner during the period July 9, 1933, to January 6, 1936, both dates inclusive, was purchased for its account out of monies belonging to Petitioner by Niagara Falls Milling Company.

"(b) All of the processing tax on wheat paid on account of the foregoing processing of wheat by Petitioner was paid for the account of Petitioner out of monies belonging to Petitioner by Niagara Falls Milling Company, or by it.

"(c) Niagara Falls Milling Company and Middleport Flour Mills, Inc., now Angelus Milling Company, had common officers and a common bank account, where the monies belonging to each were commingled."

The respondent respectfully submits in support of the foregoing motion that a reading of the above-quoted paragraphs of the petition readily discloses that the said petition is so

replete with inconsistencies, contradictions, and ambiguities as to fail wholly to advise this respondent definitely as to the true identity of either the processor or the taxpayer with respect to the alleged payments of amounts as tax on the processing of wheat in the total alleged sum of $145,839.12. For example, while it is alleged in paragraph 2 of the petition that the petitioner during the tax period in question processed wheat under the name of "Middleport Flour Mills, Inc., now Angelus Milling Company", the petitioner further alleges in paragraph 3 of the petition that the processing taxes in question were paid either by the petitioner *Angelus Milling Company*, itself, or for its account out of its own moneys. It also is alleged in paragraphs 4 and 5 of the petition that other claims were filed theretofore, both by "Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc." and "Niagara Falls Milling Company" for refund of amounts paid as tax on the processing of wheat, which claims purportedly included the amount attempted to be claimed by the petitioner in the instant proceeding. However, the petitioner has failed to allege and show how and when, if at all, the petitioner acquired the properties of Middleport Flour Mills, Inc., and in particular the right to file a claim for refund of processing taxes apparently paid either by and in the name of the alleged processor, Middleport Flour Mills, Inc., or by Niagara Falls Milling Company out of moneys belonging either to Middleport Flour Mills, Inc., or to the petitioner (see paragraphs 2 and 10(b) of petition); nor does the petitioner allege and show whether or not Middleport Flour Mills, Inc., is a trade name of an individual, a partnership, or a corporation. The respondent further submits that the allegations hereinabove quoted in paragraphs 10(a), (b), and (c) of the petition herein, with respect to the alleged manner of wheat purchases and the alleged payments as tax on the processing thereof, and other allegations with reference to the alleged common officers and common bank account of the various concerns therein mentioned, to wit, Niagara Falls Milling Company, Middleport Flour Mills, Inc., and the petitioner, Angelus Milling Company, are so confusing as to prevent this respond-

ent from intelligently replying thereto unless further clarified, as prayed herein.

It therefore is impossible to determine with certainty from the allegations of the petition and its exhibits whether the petitioner is claiming an amount paid as processing tax by 1. Niagara Falls Milling Company (either on its own behalf or as agent for the petitioner or Middleport Flour Mills, Inc.), 2. Niagara Falls Milling Co., Inc., 3. Middleport Flour Mills, Inc., or by 4. The petitioner, Angelus Milling Company. It also is impossible to determine with certainty from the allegations of the petition whether Middleport Flour Mills, Inc., is or was a trade name of an individual, a partnership, or a corporation. It also is impossible to determine with certainty whether the petitioner acquired the properties (and particularly this purported claim for refund) of the alleged processor, Middleport Flour Mills, Inc., by assignment, sale, merger, reorganization, or in any manner whatsoever, and, in view of the foregoing reasons, this respondent accordingly is unable to plead intelligently thereto.

In view of the foregoing, the respondent further moves that the order requiring a further and better statement of the nature of petitioner's purported claim, as prayed for herein, require the petitioner to set forth in detail the following facts:

1. A clear and complete statement disclosing the exact status and history of the business relations and existing connections, if any, during the statutory tax period and the statutory period before and after the tax, with reference to the four purported concerns in question, to wit, the Niagara Falls Milling Co., Inc., Niagara Falls Milling Company, Middleport Flour Mills, Inc., and Angelus Milling Company.

2. The true and correct name and description of the processor and the place of processing, together with the quantity in bushels of the particular wheat processed, upon the processing of which an amount was paid as tax, the refund of which purportedly is claimed herein.

3. The true and correct name and description of the taxpayer or taxpayers who actually paid the total amount in question as tax on the processing of wheat, setting forth the

date and amount of each payment and by whom paid, the collector of internal revenue to whom paid, the exact manner or method in which each payment was made and the true capacity of the payor in each instance, *i.e.*, whether acting as principal or agent, etc.

4. If it appears that the processor or processors and the taxpayer or taxpayers with respect to the amount allegedly paid as processing tax, the refund of which is attempted to be claimed herein, was or were other or others than the petitioner, with respect to either all or part of said amount, then that the petitioner be required to set forth in detail the facts by and through which it allegedly came into possession of the right to claim such amount or amounts on its own behalf, together with the right to institute this proceeding thereon.

In the event of the denial of this motion, or in the event the petition is amended by the petitioner, either voluntarily or pursuant to the order of the Board, the respondent requests that he be granted the usual time, as provided in Rule 10 of the Rules of Practice before the United States Processing Tax Board of Review (Second Edition), from the date of service upon him a copy of the order denying this motion or from the date of service upon him of a copy of the amended petition, within which to answer or move further in respect to the petition.

WHEREFORE, it is prayed that this motion be granted.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.
R. F. B.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.
LCH/LMO 10/2/41

FILED
11:30 A. M.
Oct. 27, 1941
United States Processing
Tax Board of Review
R

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

MOTION TO EXTEND TIME WITHIN WHICH TO REPLY TO RESPONDENT'S MOTION FOR BETTER STATEMENT OF CLAIM

NOW COMES Petitioner, by its attorney, PREW SAVOY, and respectfully moves for an extension of time of thirty days within which to reply to the Motion for Better Statement of Claim, and to request an opportunity for hearing thereon if such hearing is deemed necessary.

In support of said Motion, your Petitioner shows that Niagara Falls Milling Co., Inc., is in receivership and it has been impossible to obtain access to all of the records required for the purpose of answering said Motion.

Your Petitioner further shows that it has just now received photostatic copies of the monthly returns of Niagara Falls Milling Company and/or Angelus Milling Company, Inc., for the tax period in question; and it will take considerable time to make the proper analysis thereof with a view to answering the Motion of Respondent.

Respondent has no objection to the granting of this Motion.

Respectfully submitted,
(Signed) PREW SAVOY,
Attorney for Petitioner,
Munsey Building,
Washington, D. C.

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

ORDER

Upon motion filed by petitioner, it is

ORDERED, That the time of each party within which to file a brief and to request oral argument with respect to respondent's motion for better statement of claim is hereby extended to and including November 26, 1941.

By the Board.

WILLIAM SCHWARTZ,
Chairman.

Dated October 27, 1941.

Copy sent to Prew Savoy, Esq., by Regis. Mail No. 307,291, 10/27/41. Copy, with copy of Motion, sent to J. P. Wenchel, Esq., by Regis. Mail, No. 307,293, 10/27/41.

C. T.

FILED
3 P. M.
Nov. 21, 1941
United States Processing
Board of Review
R

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

AMENDMENT TO PETITION IN RESPONSE TO MOTION FOR BETTER STATEMENT OF CLAIM

In response to the Motion for a Better Statement of Claim, and as an amendment to the Petition, your Petitioner shows, as follows:

1. Middleport Flour Mills, Inc., is a corporation organized and existing under the laws of the State of New York. Under date of May 11, 1933, the name of the corporation was changed by Resolution of the Board of Directors to Angelus Milling Company, Inc., and on March 26, 1934, to Angelus Milling Company.

2. Niagara Falls Milling Co., Inc., is a corporation organized and existing under the laws of the State of New York, and sometimes uses the name of Niagara Falls Milling Company.

3. Payments of processing tax on wheat, for the account of Niagara Falls Milling Co., Inc., and Middleport Flour Mills, Inc., now Angelus Milling Company, were made to the Collector of Internal Revenue for the 28th District of New York, as follows:

1933	
July 31	$1,102.90
August 7	2,100.85
September 29	9,503.60
October 30	6,000.00
October 30	8,276.70
November 25	6,000.00
November 30	9,075.00
December 30	6,000.00
December 30	11,816.40
Sub-total	$57,875.45
1934	
January 29	$6,000.00
January 29	11,682.20
March 2	6,000.00
March 2	14,058.40
March 31	5,000.00
March 31	18,440.60
April 30	4,000.00
April 30	2,000.00
April 30	16,728.00
May 31	4,000.00
June 1	13,077.60
June 30	18,861.20
June 30	3,583.60
July 30	17,000.00
July 30	3,925.70
August 30	16,000.00
August 30	4,522.60
September 29	11,000.00
September 29	10,116.60
October 31	15,000.00
October 31	6,571.40
November 30	13,000.00
November 30	8,426.20
December 31	11,000.00
December 31	6,901.20
Sub-total	$244,895.40

1935	
January 30	$9,000.00
January 30	12,245.40
March 4	12,000.00
March 1	3,931.40
March 30	10,000.00
March 30	4,000.00
May 3	10,000.00
May 31	3,985.50
May 3	3,433.60
May 31	3,884.40
May 31	7,066.80
June 30	10,765.20
July 15	3,000.00
August 20	3,000.00
September 30	4,596.45
September 30	2,707.73
September 30	3,016.80
October 30	4,020.98
November 2	7,780.20
November 30	8,713.27
December 12	3,250.60
Sub-total	$131,274.42
TOTAL PAYMENTS	$434,045.27
Refund on Cot. Bags Cr. allowed for Charity	606.20
Interest	115.60
TOTAL	$434,767.07

Out of these sums, the following amounts were paid for the account of Middleport Flour Mills, Inc., now Angelus Milling Company, based upon the processing of wheat by it, as listed below:

Date	*Units Processed*	*Tax Paid*
1933		
July		
August	19,505	$862.02
September	20,619	3,489.05
October	24,368	5,447.69
November	21,728	6,185.57
December	26,067	7,728.11
1934		
January-February	63,797	15,991.82
March	18,471	9,933.35
April-May	52,888	16,966.78
June	28,144	8,663.05
July	21,920	8,866.82
August	35,475	8,696.02
September	27,674	8,947.71
October	27,438	9,140.43
November	22,459	9,078.89
December	35,091	7,585.36
1935		
January-February	44,248	13,862.57
March-April	47,597	13,864.29
May	39,000	9,549.69
June	21,237	6,279.70
July	21,143	5,563.14
August	24,998	4,034.66
September	32,852	5,274.70
October	30,187	840.67
Totals	706,906	$186,751.99

Respectfully submitted,

ANGELUS MILLING COMPANY
By (Signed) R. A. O'CONNOR,
President

State of New York
County of Niagara, SS:

R. A. O'CONNOR, being duly sworn, says that he is President of the Petitioner above named, that he had read the foregoing Amendment to Petition in Response to Motion for Better Statement of Claim and is familiar with the statements contained therein and that the facts set forth therein are true to the best of his information and belief.

(Signed) R. A. O'CONNOR

SUBSCRIBED and SWORN to before me this 19th day of November, 1941.

(Signed) JOHN F. MCNUTRY,
Notary Public.

FILED
2:30 P. M.
Nov. 26, 1941
United States Processing
Board of Review
R

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

RENEWAL OF MOTION FOR BETTER STATEMENT OF NATURE OF CLAIM TO APPLY TO PETITION AS AMENDED

Comes now the respondent by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and, in consideration of the patent insufficiency of the purported "Amendment to petition in response to motion for better statement of claim," filed herein by the petitioner on November 31, 1941, the respondent hereby respectfully renews his motion for a better statement of the nature of petitioner's claim, as addressed to the original petition, and requests that the said motion of respondent together with the memorandum brief filed in support thereof shall stand and apply in full force to the petition as so amended. (References hereinafter made to paragraph 4 of said amendment to petition refer to the unnumbered paragraph commencing at the middle of page 3 of said amendment.)

In support of the foregoing renewal of respondent's motion for a better statement of the nature of petitioner's claim and for additional grounds in support thereof, the respondent further submits:

1. While it is alleged in paragraph 1 of the said amendment to petition that the name of Middleport Flour Mills, Inc., was changed by resolutions of the board of directors to Angelus Milling Company, Inc., and later to Angelus Milling Company, respectively, it is not alleged and shown that such purported changes of corporate names were duly effected in the manner prescribed by the laws of the State of New York in such cases made and provided, nor is it alleged and shown that sworn certificates of such purported changes of corporate names were duly filed with the Department of State of the State of New York, and that copies of such certificates, duly certified by the Secretary of State of the State of New York, were, in each instance, duly filed in the office of the Clerk of the County in which the office of the corporation was then located, all of which is more particularly set forth and prescribed in sections 40 and 8, respectively, of the General Corporation Law of the State of New York (Laws 1929, chap. 650, as amended April 15, 1929).

2. While it is alleged in paragraph 2 of the amendment to petition that "Niagara Falls Milling Co., Inc., is a corporation organized and existing under the laws of the State of New York, and sometimes uses the name of Niagara Falls Milling Company", it is not alleged by what authority, if any, the said corporation "sometimes" uses another name and whether or not such other name in fact belongs to some other corporation or association; nor does the petitioner allege or explain by what authority or for what reason *it* apparently (?) refers to Niagara Falls Milling Co., Inc., throughout its petition as Niagara Falls Milling Company.

3. A patent inconsistency and ambiguity appears in the allegations of paragraph 3 and 4 of the amendment to petition, respectively, in that it is alleged in part in paragraph 3 of said amendment that "Payments of processing tax on wheat, for the *account of Niagara Falls Milling Co. Inc. and Middleport Flour Mills, Inc., now Angelus Milling Company*, were made to the Collector of Internal Revenue for the 28th District of New York, as follows:" etc. (*italics* supplied), while in paragraph 4 of said amendment it is alleged in part that "Out of these sums, the following amounts were paid for the *account of Middleport Flour Mills, Inc., now Angelus Milling Com-*

pany based upon the processing of wheat by it, as listed below:" etc. (*italics* supplied). (Here follows a list by months from July 1933 to October 1935, inclusive, purportedly, but not in fact, showing the units allegedly processed each month, together with the respective amounts of the tax paid "for the account of Middleport Flour Mills, Inc., now Angelus Milling Company".)

From the above-quoted allegation in paragraph 3 of the amendment to petition it first would appear that the payments of processing tax on wheat were made to the Collector of Internal Revenue for the *one joint account* "of Niagara Falls Milling Co. Inc. and Middleport Flour Mills, Inc., now Angelus Milling Company", while from the above-quoted allegation in paragraph 4 of the amendment it would appear that a definite amount was actually paid to the Collector each month for the *separate* "account of Middleport Flour Mills, Inc., now Angelus Milling Company".

4. Another glaring inconsistency appearing in the allegations of the amendment to petition is as follows: While it is alleged in paragraph 1 of the amendment to petition that under date of *May 11, 1933*, the name of Middleport Flour Mills, Inc., was changed to Angelus Milling Company, Inc., and on *March 26, 1934*, to Angelus Milling Company, nevertheless it is alleged in paragraph 3 that processing tax payments *beginning in July 1933* were made "for the account of Niagara Falls Milling Co., Inc., and *Middleport Flour Mills Inc.*", while in paragraph 4 of said amendment it is alleged in part that "Out of these sums, the following amounts were paid for the account of *Middleport Flour Mills, Inc.*" etc., all of this being in spite of the fact that *Middleport Flour Mills, Inc.*, allegedly had no official existence subsequent to *May 11, 1933!*

5. In short, the respondent submits that the record in this proceeding clearly reflects that either the petitioner in truth has no valid case and cannot state the actual facts without disclosing such invalidity *or* the petitioner is guilty of inexcusable looseness in pleading. The respondent, therefore, in closing again urges that the petitioner be required by the order of this Board to dispel the clouds of doubt, uncertainty, and suspicion surrounding this proceeding by filing a clear, complete, and detailed statement setting forth all the facts in connection

with the foregoing matters and also the matters heretofore enumerated in the original motion of respondent for a better statement of the nature of petitioner's claim together with the memorandum brief of respondent in support thereof, and particularly in the following respects:

The petitioner should be required to detail at length all the facts in relation to the alleged mutual business operation of Niagara Falls Milling Co., Inc., (or Niagara Falls Milling Company) and Middleport Flour Mills, Inc., (or Angelus Milling Company, Inc., or Angelus Milling Company) during the statutory tax period and the period before and after the tax. (In this connection it is submitted that it does not appear from the allegations of the petition whether or not the petitioner was in business during the statutory period before and after the tax.) Such statement of facts should disclose:

(a) The principal office or place of business of each corporation, respectively, at all times during the periods in question.

(b) The exact location of the mill or mills for the processing of wheat operated by each corporation during the periods in question.

(c) The exact manner or method of operation of the mill or mills above mentioned, stating in each instance whether or not the processor-corporation was the owner of the mill or mills operated or whether it was operating such mill or mills under a lease or some other arrangement, stating the details thereof.

(d) If it should appear with respect to the foregoing matters that during any part of said periods the corporations in question (particularly Niagara Falls Milling Co., Inc., and Middleport Flour Mills, Inc., "now Angelus Milling Company") were operating the same mill or mills either at the same or at different times, then full details should be given as to the exact operating arrangements, financial and otherwise.

(e) In view of the allegation in paragraph 10(a) of the original petition that "All of the wheat processed by Petitioner during the period July 9, 1933 to January 6, 1936, both dates inclusive, was purchased for its account out of monies belonging to

Petitioner by Niagara Falls Milling Company", the petitioner also should be required to state the facts in regard to the purchase of wheat processed by petitioner during the statutory period before and after the tax. As to *all* periods the petitioner should be required to state the *exact manner* in which such wheat allegedly was purchased "for its account" by Niagara Falls Milling Company, stating 1, the name of the corporation in which such purchases actually were made and the exact method of payment in each instance, 2, the exact manner and place of storage of wheat so purchased, stating whether or not such wheat was stored separately from or commingled with wheat purchased by Niagara Falls Milling Co., Inc., on its own account.

(f) All facts in regard to the disposition of the flour produced from the wheat allegedly processed by the petitioner should be set forth, stating whether or not such flour was stored on the premises of the petitioner and if not just what arrangements were made for the storage of such flour.

(g) The manner of the sale of the flour produced from the wheat allegedly processed by the petitioner during the statutory periods in question should be alleged, stating whether such sales actually were made by the petitioner in its own name and payments directly received therefor or in some other manner, setting forth the actual selling arrangements employed in either case and the facts in regard to the disposition of the proceeds of such sales.

(h) Whether or not the Niagara Falls Milling Company acted in part as the agent of the petitioner in filing the claim, described in paragraph 5 of the original petition, for the refund of processing tax "paid on account of the processing of wheat by it and by Angelus Milling Company" the petitioner herein, a purported copy of said prior claim being attached to the original petition as Exhibit "E".

(i) In view of the allegation in paragraph 10(c) of the original petition to the effect that "Niagara Falls Milling Company and Middleport Flour Mills, Inc., now Angelus Milling Company, had common officers and a common bank account, where the monies belonging to each were commingled", the peti-

tioner, in the interest of clarity, should be required to elucidate further and explain such an unusual alleged situation in the "common" affairs of the corporations in question, and especially should the petitioner be required to state whether or not the two corporations in question also had "common" employees and "common" offices for the transaction of business and a "common" mill for the processing of wheat. In this connection, the petitioner also should be required to state in what name the alleged "common" bank account was carried, who signed the checks in payment of the manufacturing and administrative expenses in connection with the alleged processing of wheat by the petitioner and in connection with the payment of expenses incurred in the sale of the flour produced from the alleged processing of such wheat and in whose name were the checks made payable in payment for the flour so sold; whether or not the officers of the petitioner-corporation drew any salaries for their alleged services in such capacity and if so the name of the corporation which signed such salary checks as the maker thereof should be stated.

(j) Since it appears from the allegation in paragraph 4, pages 3 and 4, of the amendment to petition that the total sum of $186,751.99 allegedly was paid as tax "for the account of Middleport Flour Mills, Inc., now Angelus Milling Company", the petitioner should be required to explain the difference between the above amount and the amount of $145,839.12 alleged in paragraph 3 of the original petition as the amount paid by petitioner or which it "had paid for its account * * * on account of processings of wheat by it". Reference to the purported "claim" of the petitioner attached to the position as Exhibit "C" shows that the latter amount of $145,839.12 was arrived at through a purported "allocation of refund due Niagara Falls Milling Company and Middleport Flour Mills, Inc. (now Angelus Milling Co., Inc.)". (See Schedule A, Ex. "C" petition) Such purported allocation apparently attempts to divide the total combined amount allegedly paid as processing taxes by or on behalf of both corporations, between the two corporations on a pro rata basis according to the quantity and value

of the flour allegedly sold by each. However, no such explanation appears on pages 3 and 4 of said amendment to petition as to *how* the petitioner *now* is able to arrive at the *new* figures appearing thereon allegedly showing the number of units processed each month (?) and the tax paid "for the account" of the petitioner with respect thereto in the total alleged sum of $186,751.99. Since the petitioner does not purport to claim the refund of more than the said sum of $145,839.12, this Board also should be informed as to the source and identity of the sum of $40,912.87 (representing the difference between the foregoing amounts), which latter amount the petitioner apparently admits shifting.

(k) While the petitioner sets forth on pages 2 and 3 of its amendment to petition a list of the payments of processing tax allegedly made "for the account of Niagara Falls Milling Co. Inc., and Middleport Flour Mills, Inc., now Angelus Milling Company", it is self-evident that this is *far* from constituting a compliance with the provisions of paragraph 3, page 6, of respondent's original motion for a better statement of the nature of petitioner's claim, wherein it is prayed that the petitioner be required to set forth in detail:

"*The true and correct name and description of the taxpayer or taxpayers who actually paid the total amount in question as tax on the processing of wheat*, setting forth the date and amount of each payment *and by whom paid*, the collector of internal revenue to whom paid, *the exact manner or method in which each payment was made and the true capacity of the payor in each instance, i.e., whether acting as principal or agent, etc.*" (*Italics* supplied)

The portions in *italics* of the above except from respondent's motion are not covered or complied with by the petitioner in its amendment to petition. The respondent respectfully insists that it is of the utmost importance in this proceeding that the petitioner be required to inform the respondent and this Board at the outset of the exact details in connection with the payments as processing tax allegedly made "for the account of Niagara Falls Milling Co., Inc., and Middleport Flour Mills, Inc., now Angelus Milling Company" (par. 3, p. 1, amendment to petition)

and "for the account of Middleport Flour Mills, Inc., now Angelus Milling Company" (par. 4, p. 3, amendment to petition).

WHEREFORE, in view of the matters set forth herein and in the memorandum brief heretofore filed in support of respondent's original motion for a better statement of the nature of petitioner's claim, it is prayed that the said motion, as herein renewed and supplemented to apply to the petition as amended, be granted.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.

LCH/LMO 11/25/41

FILED
3:05 P. M.
Dec. 29, 1941
United States Processing
Tax Board of Review
H.A.

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

MOTION FOR LEAVE TO FILE AMENDED PETITION

NOW COMES the Petitioner herein, by its counsel, and respectfully moves for leave to file an Amended Petition, in lieu of the Petition, of the Amendment to Petition in response to Motion for a Better Statement of Claim, and the Amendments to the Petition, granted upon Petitioner's oral motions at the hearing upon Respondent's Motion for Better Statement of Nature of Claim, December 19, 1941.

In support of this Motion your Petitioner respectfully shows that the granting of this Motion will simplify the pleadings by putting in one document all of the material facts alleged in the foregoing documents and the amendments which the Presiding Officer ordered be made at the hearing of December 19, 1941. Such simplification will make it easier for the Respondent to file a responsive reading and will be more convenient for this Board.

Respectfully submitted:

(Signed) PREW SAVOY,
Counsel for Petitioner,
Munsey Building,
Washington, D. C.

December 29, 1941.

FILED
3:05 P. M.
Dec. 29, 1941
United States Processing
Tax Board of Review

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 398

AMENDED PETITION

The above-named Petitioner hereby petitions, under the Revenue Act of 1936, for a hearing on the merits of its claim for the refund of processing tax on wheat, paid under the Agricultural Adjustment Act of May 12, 1933, as amended, together with interest thereon, and as a basis for this proceeding alleges, as follows:

1. Petitioner is a corporation organized and existing under the laws of the State of New York, with its principal office at Niagara, New York. On June 13, 1933, the name of Petitioner was changed from "Middleport Flour Mills, Inc." to "Angelus Milling Company, Inc.". It is sometimes called "Angelus Milling Company". (EXHIBIT E attached)

2. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of wheat.

3. Niagara Falls Milling Co., Inc., sometimes called "Niagara Falls Milling Company", is a corporation organized and existing under the laws of the State of New York. During the period July 9, 1933, to January 6, 1936, both dates inclusive, said corporation was a processor of wheat.

4. For the period July 9, 1933, to January 31, 1935, joint returns on account of the processing of wheat by Petitioner and Niagara Falls Milling Co., Inc., were filed with the Collec-

tor of Internal Revenue for the 28th District of New York, and tax in the sum of $324,016.25 was paid on account of such processings.

5. For the period February 1, 1935, to November 30, 1935, both dates inclusive, returns were filed in the name of Niagara Falls Milling Co. on account of the processings of wheat by Petitioner and Niagara Falls Milling Co., Inc., with the Collector of Internal Revenue for the 28th District of New York, and tax, in the sum of $110,029.02, was paid on account of such processings.

6. Of the aforesaid sums paid as processing tax on wheat, the following amounts were paid on account of the processings by Petitioner listed below, out of monies belonging to Petitioner:

Date	*Units Processed*	*Tax Paid*
1933		
July		
August	19,505	$862.02
September	20,619	3,489.05
October	24,368	5,447.69
November	21,728	6,185.57
December	26,067	7,728.11
1934		
January-February	63,797	15,991.82
March	18,471	9,933.35
April-May	52,888	16,866.78
June	28,144	8,663.05
July	21,920	8,866.82
August	35,475	8,696.02
September	27,674	8,947.71
October	27,438	9,140.43
November	22,459	9,078.89
December	35,091	7,585.26
1935		
January-February	44,248	13,862.57
March-April	47,597	13,864.29
May	39,000	9,549.69
June	21,237	6,279.70
July	21,143	5,563.14

August	24,998	4,034.66
September	32,852	5,274.70
October	30,187	840.67
	706,906	$186,751.99

7. On or about January 29, 1936, claims were filed on Form 843 by "Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc.", with the Collector of Internal Revenue for the 28th District of New York, for the refund of processing taxes on wheat paid by Petitioner and Niagara Falls Milling Co., Inc., in the total sum of $454,045.27 (EXHIBITS A-1, 2 and 3 attached to Petition) paid on account of the processing of wheat by them.

8. After the passage of the Revenue Act of 1936, and prior to January 1, 1940, i.e., on June 30, 1937 (R. 84), Niagara Falls Milling Company filed a claim for the refund of processing tax in the sum of $436,231.73, with the Collector of Internal Revenue for the 28th District of New York, paid on account of the processing of wheat by it and by Petitioner. (EXHIBIT B attached to Petition)

9. After the passage of the Revenue Act of 1936, and prior to January 1, 1940, i.e., on or about August 15, 1938, Petitioner filed a claim for the refund of $145,839.12, paid out of its monies, on account of the processing of wheat by it, with the Collector of Internal Revenue for the 28th District of New York, designating this claim as "Amendment to Claim". (EXHIBIT C attached to Petition)

10. Under date of May 24, 1941, the Commissioner, in a letter sent by registered mail, disallowed the claim of Petitioner mentioned in paragraph 9, in its entirety. (EXHIBIT D attached to Petition)

11. The taxes involved are processing taxes paid out of Petitioner's monies on account of the first domestic processing of wheat by Petitioner. The amount in controversy is $145,839.12, plus interest.

12. Petitioner avers that in rejecting said claim for refund manifest error occurred and intervened to the prejudice of Petitioner who now assigns the following errors and each of

them, which it avers occurred in the rejection of said claim for refund:

(a) The Commissioner erred in holding that Petitioner was not the taxpayer of any amount of tax in controversy.

(b) The Commissioner erred in failing to give consideration to, and the usual hearings on, Petitioner's claim.

(c) The Commissioner erred in holding that Petitioner failed to establish that it bore the burden of the tax, refund of which is claimed.

(d) The Commissioner erred in failing to hold that Petitioner established that it bore the burden of the tax, refund of which is claimed.

(e) The Commissioner erred in disallowing the refund of tax claimed.

(f) The Commissioner erred in failing to allow the refund of the tax claimed.

13. The facts upon which Petitioner relies as the basis of this proceeding are, as follows:

(a) All of the wheat processed by Petitioner during the period July 9, 1933, to January 6, 1936, both dates inclusive, was paid for out of monies belonging to Petitioner.

(b) All of the processing tax on wheat paid on account of the foregoing processing of wheat by Petitioner was paid out of the monies belonging to Petitioner.

(c) Niagara Falls Milling Company and Middleport Flour Mills, Inc., now Angelus Milling Company, Inc., the Petitioner during the tax period, had common officers and a common bank account, where the monies belonging to each were commingled, and out of which the common officers made the foregoing payments on behalf of the corporation concerned.

(d) Petitioner did not shift the burden of the processing tax on wheat in the selling price of the articles produced from the wheat involved in this proceeding, nor change the quantity of the wheat in any article, nor change the quality of any article in any manner whatsoever during the tax period, so that the tax was not recovered through inclusion thereof by Petitioner or any other person in the price of the articles

produced from the wheat involved in this proceeding, nor did Petitioner shift the tax burden to the producer of wheat.

(e) Petitioner was not reimbursed on account of any part of the tax paid in the sum of $145,839.12.

(f) Petitioner was not relieved of the burden of the tax, nor did Petitioner shift such burden directly or indirectly in any manner whatsoever, including a shift or relief through the payment of rent, salaries, wages, advertising but not limited thereto, nor was Petitioner relieved of the burden through cancellation of any mortgage, lease, contract, or otherwise, nor was the Petitioner relieved by reason of any extraordinary capital gains or through the sale of any article produced from any commodity other than wheat, nor was the Petitioner relieved by reason of any reduction in any excise tax or import duty, reduced by reason of the imposition of the processing tax on wheat, nor was there any understanding or agreement, written or oral, existing whereby Petitioner may be relieved of the burden of such amount, be reimbursed therefor or may shift the burden thereof.

13. Petitioner desires that the hearing may be held in Washington, D. C.

WHEREFORE, the Petitioner prays that this Board may hear the proceedings and that the Board may reverse the holding of the Commissioner, and order the refund of $145,839.12, together with interest thereon from the dates of payment thereof.

ANGELUS MILLING COMPANY, INC.

By (Signed) PREW SAVOY,

Counsel for Petitioner.

District of Columbia,
City of Washington—SS:

PREW SAVOY, being duly sworn, says that he is Counsel for the Petitioner above named, that he has read the foregoing Petition and is familiar with the statements contained therein and that the facts set forth therein are true to the best of his information and belief.

(Signed) PREW SAVOY.

SUBSCRIBED and SWORN to before me this 29th day of December, 1941.

(Signed) WALLACE STOEVER,
Notary Public—D. C.

EXHIBIT "E"

EXHIBIT "E"

EDWARD J. FLYNN
SECRETARY OF STATE

FRANK S. SHARP
Deputy Secretary of State
Chief of Division

STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
ALBANY June 13, 1933.

Middleport Flour Mills, Inc.,
Lockport,
N. Y.

Dear Sirs:

Certificate of change of name of

MIDDLEPORT FLOUR MILLS, INC.

to

ANGELUS MILLING COMPANY, INC.

has been received and filed today as requested.

Fee $25.00 paid.

Yours truly,

Frank S. Sharp

Chief of Division.

RECEIVED
3:10 P. M.
Jan. 16, 1942
United States Processing
Tax Board of Review
R.

State of New York
County of Niagara—SS:

R. A. O'CONNOR, being duly sworn, says that he is President of the Petitioner above named, that he has read the foregoing Petition and is familiar with the statements contained therein and that the facts set forth therein are true to the best of his information and belief.

(Signed) R. A. O'CONNOR,
President.

SUBSCRIBED and SWORN to before me this 14th day of January, 1942.

(Signed) JOHN D. MAHONEY,
(SEAL) *Notary Public.*

FILED
Jan. 16, 1942
United States Processing
Tax Board of Review

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

ORDER

Respondent having filed a "Renewal of Motion for Better Statement of Nature of Claim to apply to Petition as Amendment," which motion was submitted upon the oral arguments and briefs of the parties; and petitioner, during the course of said oral argument, having been granted permission to further amend its petition, and having filed a motion for Leave to File Amended Petition, the premises considered, it is

ORDERED, That the petitioner's motion for Leave to File Amended Petition be, and it is hereby granted, and it is

FURTHER ORDERED, That respondent's motion for Better Statement of Nature of Claim, as renewed, be and the same is hereby denied, and respondent is given to and including February 16, 1942, to answer.

Reviewed by the Board.

(Signed) PERCY S. CREWE,
Member.

Dated: January 20, 1942.

Copy sent to Prew Savoy, Esq., by Regis. Mail No. 307,573, 1/20/42. Copy sent to J. P. Wenchel, Esq., by Regis. Mail No. 307,572, 1/20/42.

H. A.

FILED
12:20 P. M.
Feb. 16, 1942
United States Processing
Tax Board of Review
H. A.

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

MOTION TO DISMISS

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and moves that the petition in the above-entitled proceeding be dismissed on the following grounds:

(1) It appears on the face of the record in this proceeding that this Board is without jurisdiction to proceed further in the premises for the following reasons:

(a) The purported copy of the alleged "claim for refund" attached to the original petition herein as Exhibit "C", the alleged disallowance of which is sought to be reviewed herein, shows on its face that it is not a true and complete claim but only a purported "AMENDMENT TO CLAIM".

(b) The alleged copy of the so-called "AMENDMENT TO CLAIM", attached to the original petition herein as Exhibit "C", the alleged disallowance of which is sought to be reviewed herein, shows on its face that it is not a valid claim for refund, prepared in accordance with the mandatory and jurisdictional requirements of the controlling statutory provisions and the rules and regulations promulgated pursuant thereto.

1. The respective "Schedules" of the official "P. T. Form 79", on which the so-called "AMENDMENT TO CLAIM" allegedly was executed, which schedules were required to be filled in by the claimant-petitioner, were not so filled in but were left entirely in blank. The said "AMENDMENT TO CLAIM" was therefore a nullity as constituting an alleged "claim for refund".

2. The so-called "AMENDMENT TO CLAIM" does not contain "margins" computed in accordance with section 907 of the Revenue Act of 1936, 49 Stat. 1750-53 (U. S. C., 1940 Ed., title 7, sec. 649), and Article 605 of Regulations 96, promulgated pursuant thereto.

3. The so-called "AMENDMENT TO CLAIM" shows on its face that the claimant-petitioner has not complied with the provisions of section 903 of the Revenue Act of 1936, 49 Stat. 1747, as amended by section 405 of the Revenue Act of 1939, 53 Stat. 834 (U. S. C., 1940 Ed., title 7, sec. 645), and Articles 201 and 202 of Regulations 96, respectively, promulgated pursuant thereto, in that said "AMENDMENT TO CLAIM" was not prepared in accordance with the printed instructions on the prescribed, official "P. T. Form 79", and does not set forth in detail and under oath each ground upon which a refund is claimed, and is not a true and complete claim substantiated by clear and convincing evidence of all facts necessary to establish same to the satisfaction of the respondent or this Board.

4. It appears on the face of the so-called "AMENDMENT TO CLAIM" that the claimant-petitioner has not complied with the provisions of section 902 of the Revenue Act of 1936, 49 Stat. 1747 (U. S. C., 1940 Ed., title 7, sec. 644), and Article 204 of Regulations 96, promulgated pur-

suant thereto, in that the claimant submitted no evidence to the respondent in support of its "claim", in the appropriate "schedules" provided therefor on the official claim form, from which the respondent could legally have determined that the claimant-petitioner bore the burden of any amount allegedly paid as processing tax, and that it had not been or might not be relieved thereof, nor reimbursed therefor, and had not shifted such burden, directly or indirectly, through or by any of the means set forth in section 902(a) of the Act, *supra*; or that it had repaid such amount unconditionally to its vendees who bore the burden thereof, as provided in section 902(b) of the Act, *supra*.

(c) It is nowhere affirmatively alleged of record by the petitioner, either in the "Amended Petition" *proper* or in the so-called "AMENDMENT TO CLAIM", a purported copy of which is attached to the original petition herein as Exhibit "C", (the alleged disallowance of which is sought to be reviewed herein) that the claimant-petitioner *was the taxpayer* with respect to any amount allegedly paid as tax on the processing of wheat by the claimant-petitioner, the refund of which is purportedly sought herein.

(2) The amended petition is not properly verified as required by Rule 5(i) of the Rules of Practice before the United States Processing Tax Board of Review (Second Edition).

(a) The purported verification as amended of the amended petition herein shows on its face that it was executed merely upon "information and belief".

(b) The purported verification as amended of the amended petition herein fails to comply with the requirements of this Board with respect thereto as contained in Form No. 1, in the "Appendix" to the Board's Rules of

Practice, *supra*, the same being a model form of petition as prescribed by this Board in which the approved form for the verification of a petition is set forth (on page 17) as follows:

"STATE OF .....
County of .....—SS:

....., being duly sworn, says that he is the petitioner (if a corporation, or fiduciary, state title of office or trust of person verifying and that he is duly authorized to verify the foregoing petition) above named; that he had read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

(Signed).....

Subscribed and sworn to before me this ..... day of ....., 19.....

(Signed).....
(Official title)"

In the event the amended petition is further amended by the petitioner either voluntarily or pursuant to the order of the Board or in the event of the denial by the Board of this motion, the respondent requests that he be granted the usual time, as provided in Rule 10 of the Board's Rules of Practice, *supra*, from the date of service upon him of a copy of the amended petition as so further amended or from the date of service upon him of a copy of the order denying this motion, within which to answer or move further in respect of the petition.

WHEREFORE, it is prayed that this motion be granted.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.
LCH/LMO 2/11/42

FILED
10:45 A. M.
June 12, 1942
United States Processing
Tax Board of Review
R.

State of New York
County of Niagara—SS:

R. A. O'CONNOR, being duly sworn, says that he is President of the Petitioner herein, Angelus Milling Company, Inc., and that he is duly authorized to verify the foregoing Petition; that he has read the foregoing Petition and is familiar with the statements contained therein, and the facts stated therein are true except as to those facts stated to be upon information and belief, and those facts he believes to be true.

(Signed) R. A. O'CONNOR,
President.

SUBSCRIBED and SWORN to before me this 10th day of June, 1942.

(Signed) JOHN D. MAHONEY,
Notary Public.

(SEAL)

FILED
11:47 A. M.
July 25, 1942
United States Processing
Tax Board of Review
e.m.

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

MOTION TO PERMIT PRIOR MOTION TO APPLY TO PETITION AS AMENDED

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and respectfully submits that oral argument before Presiding Board Member John W. Edwards on respondent's motion to dismiss the petition herein was duly heard on June 4, 1942, upon the conclusion of which argument the decision of the Board on said motion was reserved. It is further shown that upon said argument counsel for petitioner requested and was granted permission to file an amended verification to the petition. However, the transcript of the proceedings does not reflect that any provision was made for the motion to dismiss of respondent to stand and apply to the petition after amendment. The amended verification in question was duly filed by counsel for petitioner on June 12, 1942.

WHEREFORE, in order to clarify the status of the record herein, it is respectfully prayed that an order be entered permitting the motion to dismiss of the respondent to stand and apply to the petition as so amended.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.
LCH/vd 7-23-42

GRANTED
July 27, 1942
(Signed) JOHN W. EDWARDS,
Member,
U. S. Processing Tax
Board of Review

UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No: 398

ORDER

On February 16, 1942 the respondent filed a motion to dismiss the amended petition in this proceeding on the following grounds: (1) that the Board is without jurisdiction to proceed further since the copy of the alleged claim for refund attached to the petition is not a true and complete claim, but only a purported amendment to claim; (2) that the said amendment to claim does not constitute a valid claim for these reasons: (a) that the schedules on the claim, Form P. T. 79, were not filled out, but were left entirely blank, (b) that it does not contain "margins" computed in accordance with section 907 of the Revenue Act of 1936, (c) that it was not prepared in accordance with the printed instructions appearing thereon and, inter alis, does not set forth in detail and under oath each ground upon which refund is claimed and (d) that no evidence was submitted to the respondent in support of such claim in the appropriate schedules provided therefor on the official claim form, from which the respondent could have determined, inter alis, that the petitioner bore the burden of any amount alleged to have been paid as processing tax; (3) that no affirmative allegation is made "that the claimant-petitioner *was the taxpayer* with respect to any amount allegedly paid as tax on the processing of wheat by the claimant-petitioner"; and (4) that the amended petition is not properly verified as required by Rule 5(i) of the Board's Rules of Practice.

Upon motions filed by the respondent the date for presenting briefs was extended from March 9, 1942 to May 9, and from May 9 to May 29, 1942. Briefs were filed by the parties

and oral argument was had on June 4, 1942. On June 12, 1942 the petitioner filed a verification of the petition which complies with the Board's Rules. The premises considered, it is

ORDERED that the respondent's motion be and it is hereby denied, and it is

FURTHER ORDERED that the respondent be and he is hereby granted to and including August 24, 1942 within which to answer.

Reviewed by the Board.

(Signed) JOHN W. EDWARDS,
Member.

Dated: August 5, 1942.

Schwartz dissents for the reasons stated in attached memorandum.

ANGELUS MILLING COMPANY,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

The claim for refund filed by this petitioner does not comply with Section 903 of the Revenue Act of 1936 and Articles 201, 202, 204 and 605 of Regulations 96 as prescribed by respondent. The fact that petitioner informed respondent that it partly based its claim upon the claim filed on Form 843 in the names of Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc. (the latter being the former name of this petitioner) was insufficient to supply the defects that are inherent in petitioner's claim even if the data contained in such Form 843 could be considered a part of petitioner's claim. For these reasons, I dissent from the order denying respondent's motion.

WILLIAM SCHWARTZ,
Chairman.

FILED
3:28 P. M.
Aug. 21, 1942
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Tax Board of Review
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UNITED STATES PROCESSING TAX BOARD OF REVIEW

ANGELUS MILLING COMPANY,
Petitioner,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. 398

ANSWER

Comes now the respondent in the above-styled proceeding, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed herein on December 29, 1941, as further amended on June 12, 1942, admits, denies, and alleges as follows:

1. Because of lack of knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the amended petition, the respondent denies the same.

2. Denies the allegation in paragraph 2 of the amended petition.

3. The respondent admits that Niagara Falls Milling Co., Inc., was at one time a coroporation organized and existing under the laws of the State of New York, as alleged in paragraph 3 of the amended petition, but further alleges on information and belief that the said corporation is now and has been for some time in bankruptcy. The respondent admits that Niagara Falls Milling Co., Inc., was a processor of wheat during the period July 9, 1933 to January 6, 1936, both dates inclusive, as alleged in paragraph 3 of the amended petition.

4. Denies the allegations in paragraph 4 of the amended petition, whether alleged directly or indirectly.

5. Denies the allegations in paragraph 5 of the amended petition, whether alleged directly or indirectly.

6. Denies the allegations in paragraph 6 of the amended petition, whether alleged directly or indirectly.

7. Denies the allegations in paragraph 7 of the amended petition, whether alleged directly or indirectly.

8. Denies the allegations in paragraph 8 of the amended petition, whether alleged directly or indirectly.

9. Denies the allegations in paragraph 9 of the amended petition, whether alleged directly or indirectly.

10. Admits that on May 23, 1941, the respondent, in a letter sent by registered mail, disallowed in its entirety a certain claim in the amount of $145,839.12, purportedly filed by Angelus Milling Company, but denies the other allegations in paragraph 10 of the amended petition.

11. Denies the allegations contained in paragraph 11 of the amended petition, whether alleged directly or indirectly.

12 (a), (b), (c), (d), (e), (f). Denies that error was committed by the respondent in the disallowance of the claim for refund in question, as alleged in paragraph 12 (a), (b), (c), (d), (e) and (f) of the amended petition, respectively.

13 (a). Denies the allegations in paragraph 13(a) of the amended petition, whether alleged directly or indirectly.

(b). Denies the allegations in paragraph 13(b) of the amended petition, whether alleged directly or indirectly.

(c). Denies the allegations in paragraph 13(c) of the amended petition, whether alleged directly or indirectly.

(d). Without admitting, but expressly denying that the petitioner was the taxpayer, processor, or proper party-claimant, with respect to any amount allegedly paid as tax on the processing of wheat purportedly involved in this proceeding, the respondent, in the alternative and for the purpose of this answer, denies the allegations in paragraph 13(d) of the amended petition, whether alleged directly or indirectly.

(e). Without admitting, but expressly denying that the petitioner was the taxpayer, processor, or proper party-claimant, with respect to any amount purportedly paid as processing tax herein, the respondent, in the alternative and

for the purpose of this answer, denies the allegation in paragraph 13(e) of the amended petition.

(f). Without admitting, but expressly denying that the petitioner was the taxpayer, processor, or proper party-claimant, with respect to any amount allegedly paid as tax on the processing of wheat purportedly involved in this proceeding, the respondent, in the alternative and for the purpose of this answer, denies the allegations in paragraph 13(f) of the amended petition, whether alleged directly or indirectly.

14. The allegation in the second consecutive paragraph numbered "13" of the amended petition, with respect to the place where the petitioner desires a hearing to be held, requires no answer from the respondent.

15. Denies generally and specifically each and every allegation in the amended petition not hereinabove admitted, qualified, or denied.

16. Further answering said amended petition, and as an affirmative defense thereto, the respondent alleges that the Board is without jurisdiction to entertain this proceeding, in that it appears on the face of the purported claim for refund, the disallowance of which is sought to be reviewed herein, (an alleged copy of which purported claim is attached as Exhibit "C" to the original petition herein filed on August 20, 1941) that the same is not a valid claim for refund, prepared in accordance with the mandatory and jurisdictional requirements of the controlling statutory provisions and the rules and regulations promulgated pursuant thereto, as more particularly set forth in respondent's motion to dismiss, filed herein on February 16, 1942, which motion was denied by the Board in its order dated August 5, 1942.

17. For a second affirmative defense to the amended petition herein, the respondent alleges that the Board is without jurisdiction to entertain this proceeding in that it is nowhere affirmatively alleged of record by the petitioner, either in the amended petition proper or in the purported claim for refund, an alleged copy of which is attached to the original petition herein as Exhibit "C", that the claimant-petitioner *was the taxpayer* with respect to any amount allegedly paid as tax on

the processing of wheat, the refund of which is purportedly sought herein.

18. For a third affirmative defense to the amended petition herein, the respondent alleges that the Board is without jurisdiction to entertain this proceeding in that the petitioner was neither the taxpayer, processor, nor proper party-claimant with respect to any amount allegedly paid as tax on the processing of wheat, the refund of which is purportedly sought herein.

WHEREFORE, respondent prays that the Board determine that the petitioner is not entitled to the refund of any amount allegedly paid as processing tax under the Agricultural Adjustment Act.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.

The Tax Court
of the United States
FILED
Jan. 29, 1943
Enr. .....
Dkt. .....
Cal. .....
Stat. .....

THE TAX COURT OF THE UNITED STATES

ANGELUS MILLING COMPANY, *Petitioner,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Docket No. 398 P.T.

MOTION TO DISMISS ON JURISDICTIONAL GROUNDS

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and respectfully submits that this Honorable Court is without jurisdiction to proceed to a hearing and determination of this case on the merits, upon the amended petition, filed herein on December 29, 1941, and that this case should be dismissed on jurisdictional and other grounds. It is therefore moved that this case be dismissed upon the following grounds:

1. The alleged copy of the so-called "AMENDMENT TO CLAIM" attached to the original petition filed herein on August 20, 1941, as Exhibit "C," which constitutes the purported "claim for refund" the disallowance of which is sought to be reviewed herein, shows on its face that it is not a valid claim for refund prepared on the official Bureau "P. T. Form 79" in accordance with the printed instructions thereon and in compliance with the mandatory and jurisdictional requirements of the controlling statutory provisions and the Treasury Regulations promulgated pursuant thereto.

(a) The purported copy of the alleged claim for refund attached to the original petition filed herein on August 20, 1941, as Exhibit "C," the disallowance of which is sought to be reviewed herein, shows on its face that it is not a true, complete, and independent claim, but only a purported "AMENDMENT TO CLAIM."

(b) Further examination of said Exhibit "C" to the original petition discloses that the same purports to be an "amendment" to a certain claim for refund allegedly "filed on the 22nd day of June 1936 in the name of the Niagara Falls Milling Company and/or Middleport Flour Mills, Inc.", and that "Originally the claim in the name of both Companies was for the sum of $434,045.27." It further appears from Exhibits "A-1," "A-2," and "A-3," attached to the original petition herein, that the said claim, as allegedly filed originally in the name of both companies for the sum of $434,045.27, in fact consisted of three separate claims, each on Treasury Department Form 843 for the recovery of taxes allegedly collected illegally, the amounts of said prior claims on Form 843, as aforesaid, totaling $434,045.27.

(c) A further examination of Exhibits "A-1," "A-2," and "A-3," attached to the original petition herein, affirmatively discloses that the actual processor and taxpayer with respect to the three separate amounts, totaling $434,045.27, theretofore claimed on Forms 843, as aforesaid, was "Niagara Falls Milling Co., Lockport, N. Y." and not the petitioner, Angelus Milling Company, as more fully appears from an itemized statement of alleged tax payments, attached to and accompanying each of said claims on "Form 843," as aforesaid.

(d) It appears on the face of the so-called "AMENDMENT TO CLAIM" that the claimant-petitioner in this case made no processing tax payments to the collector of internal revenue, in view of the fact that Schedule "A" of the official "P. T. Form 79," entitled "PROCESSING TAX PAYMENTS BY CLAIMANT TO COLLECTOR OF INTERNAL REVENUE," was left entirely blank.

(e) As a matter of fact, *all* of the respective "Schedules" of the official "P. T. Form 79," on which the so-called "AMENDMENT TO CLAIM" was executed, which schedules were required to be filled in by the claimant-petitioner, were not so filled in but were left entirely in blank.

(f) The so-called "AMENDMENT TO CLAIM" does not contain "average margins" computed in accordance with section 907 of the Revenue Act of 1936, 49 Stat. 1751-53 (U. S. C. 1940 ed., title 7, sec. 649), and Article 605 of Treasury Regulations 96, promulgated pursuant thereto.

(g) Having wholly failed to set forth, as aforesaid, in the respective schedules of the official claim form any of the facts, figures, and information, constituting the statutory "prima-facie evidence" provided for in section 907 of the Revenue Act of 1936, *supra*, the claimant-petitioner further failed and refused to set forth any "other evidence" in support of its purported claim for refund, said "OTHER EVIDENCE" being called for under Schedule "D-2" of the official "P. T. Form 79" entitled "OTHER EVIDENCE," this schedule being left entirely blank in the same manner as the other schedules, as aforesaid.

(h) The contents of the three prior "claims" on Treasury Department "Form 843" totaling $434,045.27 (Ex's. "A-1," "A-2," and "A-3," original petition), with respect to which the instant "claim for refund" (Ex. "C," original petition) purports to be an "amendment," not only add nothing to the legal sufficiency of the "claim for refund" herein, but the same cannot be considered as constituting the "original" claim, not being on the prescribed official Bureau "P. T. Form 79" or containing any of the information called for thereon.

(i) It is therefore apparent on the face of the purported "claim for refund" herein, that the same was not prepared and filed in compliance with the mandatory

and jurisdictional provisions of section 903 of the Revenue Act of 1936, 49 Stat. 1747, as amended by section 405 of the Revenue Act of 1939, 53 Stat. 884 (U. S. C. 1940 ed., title 7, sec. 645), wherein it is provided that such claims shall be filed "in accordance with regulations prescribed by the Commissioner with the approval of the Secretary," and that "All evidence relied upon in support of such claim shall be clearly set forth under oath"; that is to say, the said "claim" was not prepared in accordance with the printed instructions on the official Bureau "P. T. Form 79," and does not "set forth in detail and under oath each ground upon which the refund is claimed," and is not "a true and complete claim" substantiating by "clear and convincing evidence all of the facts necessary to establish" same to the "satisfaction" of the respondent or this Court, as more specifically required by Articles 201 and 202 of Treasury Regulations 96, respectively.

(j) It further affirmatively appears on the face of the purported "claim for refund" that the claimant-petitioner wholly failed to establish before the Commissioner the mandatory and jurisdictional facts required to be so established "to the satisfaction of the Commissioner," as a condition precedent to refund, by the provisions of section 902 of the Revenue Act of 1936, 49 Stat. 1747 (U. S. C. 1940 ed., title 7, sec. 644) and Article 204 of Treasury Regulations 96, promulgated pursuant thereto, in that the claimant submitted no evidence to the respondent in support of its "claim," from which the respondent could legally have determined that the claimant-petitioner bore the burden of any amount allegedly paid by it as processing tax, and that it had not been or might not be relieved thereof, nor reimbursed therefor, and had not shifted such burden, directly or indirectly, through or by any of the means set forth in section 902(a) of the Act, *supra;* or that it had repaid such amount unconditionally to its vendees who bore the burden thereof, as provided in section 902(b) of the Act, *supra,*

2. Even though it should be held for any reason that the purported claim for refund, the disallowance of which is sought to be reviewed herein, was sufficient *in form* to confer jurisdiction in the first instance, which the respondent denies, it still follows that this case should be summarily dismissed for the following additional reasons:

(a) As heretofore pointed out, there were no evidentiary facts submitted in connection with the "claim for refund" from which the Commissioner could have legally determined that the claimant either paid any amount as processing tax or that it bore the burden of any amount so paid.

(b) In view of the foregoing situation, and since the claimant would not be permitted under the law to introduce evidence with respect to any new or additional facts or grounds upon a hearing on the merits herein, it follows that the holding of such a hearing would be a useless procedure.

A brief in support of the foregoing motion, and in further support of the right of the respondent to file same at this time, is being currently submitted herewith, reference to which is respectfully prayed.

WHEREFORE, it is prayed that this motion be granted.

(Signed) J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
Raymond F. Brown,
Lloyd C. Hooks,
Special Attorneys,
Bureau of Internal Revenue.

LCH/vd
1/26/43

THE TAX COURT OF THE UNITED STATES

ANGELUS MILLING COMPANY, PETITIONER, *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket No. 398 P. T. Promulgated May 4, 1943.

PROCESSING TAX—JURISDICTION—INADEQUATE CLAIM.—The Court has no jurisdiction where the claims relied upon fail to set forth any of the information called for by the law, the regulations, and Form P. T. 79.

Prew Savoy, Esq., for the petitioner.
Lloyd C. Hooks, Esq., for the respondent.

OPINION

MURDOCK, *Judge*: The Commissioner filed a motion on January 29, 1943, to dismiss this proceeding on jurisdictional grounds, one of which is that the Court is without jurisdiction since the petitioner has never filed a proper claim for refund. The Commissioner argues that this petitioner has never filed a claim which has adequately set forth the basis upon which a refund could be granted. Several exhibits were introduced, the parties were heard at length, and each submitted a memorandum.

The petitioner was formerly known as Middleport Flour Mills, Inc. It has alleged that it was a processor of wheat during the period from July 9, 1933, to January 6, 1936, and that it paid $145,839.12 in processing taxes on wheat processed by it during that period. Attached to its petition are copies of certain claims for refunds and an amendment to claim marked Exhibits A, B, and C upon which the petitioner relies to show jurisdiction in this Court.

Exhibit C is a copy of an "Amendment to Claim" filed by the petitioner on August 15, 1938, claiming a refund of $145,839.12. It, alone, of the exhibits shows "Angelus Milling

Company" as the name of the claimant. It is on Form P. T. 79, the form provided for a claim for refund of processing taxes. The form includes schedules A to E, inclusive, but those schedules are left blank. Attached to the form, on a separate piece of paper, is certain information purporting to show an allocation of refund due the Niagara Falls Milling Co. and the Angelus Milling Co. by comparing the sales of flour attributable to each. The total processing taxes paid is stated as $434,045.27. The only other information on this form is an affidavit of the president of the petitioner, which is in part as follows:

> The within claim for refund was originally filed on the 22nd day of June 1936 in the name of the Niagara Falls Milling Company and/or Middleport Flour Mills, Inc. The name of Middleport Flour Mills Inc. was changed by permission of the Secretary of State of Albany, N. Y. to Middleport Flour Mills Inc.[1] Originally the claim in the name of both Companies was for the sum of $434,045.27.

Exhibit B attached to the petition is an alleged copy of a claim for refund filed by the Niagara Falls Milling Co. on Form P. T. 79, on which the amount claimed is $436,231.73. Information is given in the various schedules on that form. Apparently this claim was filed on June 30, 1937. One of the questions presented here is whether the "Amendment to Claim" filed by the petitioner (Exhibit C) may be regarded as an amendment to the claim filed by the Niagara Falls Milling Co. (Exhibit B). The original claim referred to in Exhibit C is described as having been filed in the name of "Niagara Falls Milling Company and/or Middleport Flour Mills, Inc." on June 22, 1936, claiming a refund of $434,045.27. Obviously the reference could not be to the original of Exhibit B. The name of Middleport Flour Mills, Inc., is nowhere mentioned on Exhibit B, the amount of $434,045.27 does not

[1] The reference to Middleport Flour Mills, Inc., was error. The change in name was to "Angelus Milling Company."

appear on Exhibit B, and the date of filing was about a year after June 22, 1936. Furthermore, it is reasonably clear that the reference in Exhibit C is to the claims represented by Exhibit A.

Copies of three claims are included in Exhibit A. The taxpayer named in each is "Niagara Falls Milling Co., Inc. and/or Middleport Flour Mills, Inc." One is for $57,875.45, another is for $244,895.40, and the third is for $131,274.42. The total of the three claims is $434,045.27. Apparently these claims were filed on or about June 22, 1936. The "Amendment to Claim" (Exhibit C) filed by the petitioner must have been intended as an amendment to the claims represented in Exhibit A. Those original claims were not made on Form P. T. 79, later provided and required by the Commissioner for claims for refund of processing taxes paid under the provisions of the Agricultural Adjustment Act, as amended. Instead, they were filed on an old Form 843, which was intended for a different purpose. The only information given on the claims represented by Exhibit A is a statement of taxes on processing of wheat paid by Niagara Falls Milling Co. for the period from July 31, 1933, to the end of that year, for the year 1934, and for the year 1935. The information required on Form P. T. 79 is not given on those claims.

The Commissioner denied the petitioner's claim for refund in a letter dated May 23, 1941, which was in part as follows:

> Furthermore, your claim does not contain margins computed in accordance with section 907 of the Revenue Act of 1936 and Article 605 of Regulations 96, nor has any other evidence been submitted establishing that you bore the burden of the tax as required by section 902 of the Act and Article 606 of Regulations 96. Hence, you have not filed a true and complete claim in accordance with the requirements of section 903 of the Act and the regulations promulgated pursuant thereto.
>
> Since you did not pay the tax, refund of which is claimed to the Government and you have not filed a true and complete claim in accordance with the requirements of Title VII of the Revenue Act of 1936, your claim is hereby disallowed in full.

Section 903 of the Revenue Act of 1936 provides that no refund shall be allowed of any amount paid under the Agricultural Adjustment Act unless after the enactment of the Revenue Act of 1936 (June 22, 1936) and prior to July 1, 1937, a claim for refund has been filed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. It further provides that all evidence relied upon in support of such claim shall be clearly set forth under oath. The Commissioner issued Regulations 86 relating to the above provision. Those regulations provide that claims shall be on the prescribed forms and shall be prepared in accordance with the instructions contained on the forms. Art. 201. They further provide that each claim shall set forth in detail and under oath each ground upon which the refund is claimed. Art. 202. Article 601 of those Regulations provides that claims for refund of amounts paid as processing tax shall be filed on P. T. Form 79. Article 605 requires that there be submitted as a part of each claim a statement showing the average margin for the tax period and for the period before and after the tax. It also requires a detailed showing of the manner in which the margins for each month and the average margin for each period were ascertained, the data and records upon which they were based, the location of such data and records, and all other related matters.

The United States Circuit Court of Appeals for the Eighth Circuit, in discussing claims for refund of processing taxes, said in *Lee Wilson & Co.* v. *Commissioner*, 111 Fed. (2d) 313:

> The function of the facts called for by the schedules is to facilitate research; and the Commissioner was entitled to insist upon compliance with their directions as to the desired information. A claim that refers to no facts upon which it may be founded is ineffective and "will not supply a basis for a suit against the government when there has been neither waiver by the Commissioner nor amendment by the taxpayer."

Numerous cases were cited in support of that statement. The court in that case further held that evidence had to be set forth

in the claim and "A claim that fails to meet the statutory requirements and that has been properly disallowed by the Commissioner as defective leaves the Board without jurisdiction to grant a refund." The same court on a second appeal by the same taxpayer (see *Lee Wilson & Co.* v. *Commissioner*, 123 Fed. (2d) 232) said:

> Since the claim for refund failed to furnish to the respondent a sufficient evidentiary basis for determining the probable merits of the petitioner's asserted claim, we think the Board was without jurisdiction to grant petitioner a refund and did not err in dismissing the petition for review.

See also *Landrum* v. *Commissioner*, 122 Fed. (2d) 857; *Tennessee Consolidated Coal Co.* v. *Commissioner*, 117 Fed. (2d) 452. Cf. *Samara* v. *United States*, 129 Fed. (2d) 594; certiorari denied, — U. S. —.

The "Amendment to Claim" which the petitioner filed on or about August 15, 1938, does not set forth a sufficient evidentiary basis for determining the probable merits of the asserted claim. The petitioner does not argue to the contrary. That "Amendment to Claim" was not an amendment to the claim of "Niagara Falls Milling Co., Inc." represented by Exhibit B.[2] It was obviously intended as an amendment to the claims filed in 1936 under the names of "Niagara Falls Milling Co., Inc., and "Middleport Flour Mills, Inc." The "Amendment to Claim" and those original claims, when read together, do not set forth a sufficient evidentiary basis for determining the probable merits of the asserted claim. Therefore, under the authority of the cases above cited, the claims relied upon by the petitioner are insufficient to give this Court jurisdiction in the proceedings.

The above cases indicate that the Commissioner may waive a defect in a claim, and the petitioner argues that he has waived all defects in its claims by examining the petitioner's

[2] There is no claim or even indication that B was an amendment of A. B is apparently complete within itself. Each was filed within the time allowed by statute for filing original claims.

books and considering its claim on the merits thereof without regard to any technical defects in the form of the claims filed. The petitioner relies upon an affidavit of one of its officers, an accountant, and upon the affidavit of another accountant, as well as upon a letter from a deputy collector, to show that the Commissioner examined the books of the petitioner while considering the claim for refund of the petitioner and before denying that claim. It has not shown, however, that the Commissioner waived any defects in its claim.

The petitioner contends that it was operated so closely with the Niagara Falls Milling Co. that only with care can the affairs of the two be separated. Most of the stock of the two was held by the same stockholders. The officers and directors of the two were the same. Only one set of books was kept for the two and one bank account was maintained. Purchases, processing, and sales were allocated between the two by the officers. It contends, however, that eventually the transactions were charged or credited to separate accounts on the single set of books in such a way that the operations of each could be shown upon the trial of this case if the books were available. The letter from the deputy collector was to Harry Dickinson. He was then the president of the Niagara Falls Milling Co. and also the president of the petitioner. The letter requested permission to examine the books of the petitioner in connection with the investigation of a claim for refund, claim F5899. Claim F5899 was the claim of the Niagara Falls Milling Co., whereas the claim of the petitioner was F10130. Thus, the letter does not support the petitioner's contention that the Commissioner gave consideration to the merits of its own claim. Furthermore, we are told that the books of the petitioner were the same as the books of the Niagara Falls Milling Co. The Commissioner could not investigate the claim of the latter without examining its books, which were likewise the books of the petitioner. The affidavits are not convincing that the Commissioner waived any defects in the claim of this petitioner. There is no allegation in the petitioner's pleadings to the effect that the Commissioner waived defects and investigated the claim on its merits.

On the contrary, the petition assigns as one of the errors the action of the Commissioner "in failing to give consideration to, and the usual hearings on, petitioner's claim." The letter of the Commissioner rejecting the claim of the petitioner indicates on its face that the Commissioner did not waive any defects in the claim. The reasons, and the only reasons, given for rejecting the claim relate to defects therein, one being that the claim did not contain the necessary information and the other that it did not show the tax as paid by the petitioner.

We are unable to hold that the Commissioner has waived defects in the claim. The proceeding must be dismissed for lack of jurisdiction. Discussion of the other ground advanced by the respondent is unnecessary.

(The Tax Court of
SEAL
the United States)

THE TAX COURT OF THE UNITED STATES
WASHINGTON

ANGELUS MILLING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 398 P.T.

ORDER OF DISMISSAL

Pursuant to the determination of the Court, as set forth in its Opinion, promulgated May 4, 1943, it is

ORDERED: That this proceeding is dismissed for lack of jurisdiction.

Enter:

ENTERED MAY 4, 1943

(s) J. E. MURDOCK,
Judge.

The Tax Court
of the United States
FILED.
July 27, 1943
Enr.
Dkt.
Cal.
Stat.

PETITION FOR REVIEW

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

ANGELUS MILLING COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

No. P. T. 398

PETITION OF ANGELUS MILLING COMPANY FOR A REVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES

Now comes Angelus Milling Company, by its President, Raymond A. O'Connor, and complaining that it has been aggrieved by the decision of The Tax Court of the United States,

rendered against it May 4, 1943, in the case of the appeal of said petitioner against the Commissioner of Internal Revenue, Docket No. P. T. 398, and desiring a review thereof by the United States Circuit Court of Appeals for the Second Circuit, respectfully shows:

I.

Nature of the Controversy

Petitioner is a corporation organized and existing under the laws of the State of New York, with its principal office at Niagara Falls, New York. On June 13, 1933, the name of Petitioner was changed from "Middleport Flour Mills, Inc." to "Angelus Milling Company, Inc.". Since that date, Petitioner has been known as "Angelus Milling Company", and "Middleport Flour Mills", the name "Angelus" connoting the brand of flour, and the name "Middleport" designating the locale of one of the flour mills.

During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of wheat.

Niagara Falls Milling Co., Inc., hereinafter called "Niagara", is a corporation organized and existing under the laws of the State of New York. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Niagara was a processor of wheat.

For the period July 9, 1933, to January 31, 1935, joint returns, on account of the processing of wheat by Petitioner and Niagara, were filed with the Collector of Internal Revenue for the 28th District of New York, and tax in the sum of $324,016.25, was paid him on account of such processings.

For the period February 1, 1935, to November 30, 1935, returns were filed, in the name of Niagara, on account of the processings of wheat by Petitioner and Niagara, with the Collector of Internal Revenue for the 28th District of New York, and tax, in the sum of $110,029.02, was paid him on account of such processings.

Of the aforesaid sums paid as processing tax on wheat, the following amounts were paid said Collector, on the dates below set forth, on account of the processings of Petitioner listed below, out of monies belonging to Petitioner:

Date	*Units Processed*	*Tax Paid*
1933		
July		
August	19,505	$862.02
September	20,619	3,489.05
October	24,368	5,447.69
November	21,728	6,185.57
December	26,067	7,728.11
1934		
January-February	63,797	15,991.82
March	18,471	9,933.35
April-May	52,888	16,866.78
June	28,144	8,662.05
July	21,920	8,866.82
August	35,475	8,696.02
September	27,674	8,947.71
October	27,438	9,140.43
November	22,459	9,078.89
December	35,091	7,585.26
1935		
January-February	44,248	13,862.57
March-April	47,597	13,864.29
May	39,009	9,549.69
June	21,237	6,279.70
July	21,143	5,563.14
August	24,998	4,034.66
September	32,852	5,274.70
October	30,187	840.67
	706,906	$186,751.99

On or about June 23, 1936, claims were filed on Form 843 by "Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc." with the Collector of Internal Revenue for the 28th District of New York for the refund of processing taxes on

wheat paid by Petitioner and Niagara, in the total sum of $454,045.27 (Exhibits A-1, A-2 and A-3, attached to the Petition), paid to him on account of the processing of wheat by them.

On or about June 30, 1937, Niagara filed a claim for the refund of processing tax on wheat, in the sum of $436,231.73, with the Collector of Internal Revenue for the 28th District of New York, paid to him on account of the processing of wheat by it and by Petitioner. (Exhibit B attached to the Petition).

On or about August 15, 1938, Petitioner filed a claim for the refund of $145,839.12, paid out of its monies, on account of the processing of wheat by it, with the Collector of Internal Revenue for the 28th District of New York, designating this claim as "Amendment to Claim". (Exhibit C attached to Petition).

Under date of November 18, 1938, the Internal Revenue Agent in Charge of the Internal Revenue Service at Buffalo, New York, in connection with the investigation of the claim of Niagara, sent to Mr. Harry Dickinson, the President of both Petitioner and Niagara, the following letter:

> "In connection with the investigation of Claim for refund under Title VII, Revenue Act of 1936—Claim F5899, you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:
>
> General Ledgers of both corporations for the years 1935 and 1936
> Minute Books of both corporations
>
> "In view of the fact that the investigation will be completed within the next few days I would request that these records be made available to me on Monday, November 21, at Room 1011, White Building, Buffalo, N. Y.
>
> Respectfully,
>
> J. BERNARD LIEBEN,
> *General Deputy Collector*"

JBL:E

On or about September 4, 5, 6 and 7, 1940, the aforesaid J. Bernard Lieber, Deputy Collector of Internal Revenue, and other representatives of Respondent, conferred with the accountant for Petitioner, respecting Petitioner's claim for refund, fully investigating said claim, and at such conferences supplied Petitioner with all of the basic data and figures, taken from the books of it and Niagara, from which the data required in a complete claim would ordinarily and necessarily be taken.

Under date of May 24, 1941, the Commissioner of Internal Revenue, without having at any time requested from Petitioner any additional information, in view of the complete information in his possession, and without the usual conferences in Washington, in a letter sent by registered mail, disallowed the claim for refund of Petitioner filed August 15, 1938, in its entirety (Exhibit D attached to Petition), relying on a technicality, and *for the first time complaining of the incompleteness of the claim for refund.* On that date, *the books* of Petitioner and of Niagara were involved in bankruptcy proceedings involving Niagara and were unavailable to Petitioner or its Counsel, but were available to the Commissioner.

Under date of August 20, 1941, Petitioner filed a Petition with the United States Processing Tax Board of Review, for a review of the disallowance by the Commissioner of Petitioner's claim for refund. At that time, the Assistant Chief Counsel of the Treasury Department, Bureau of Internal Revenue, was refusing to allow Petitioner, or its Counsel, to examine the processing tax returns of Petitioner and Niagara, *for the reason that they were in the file of Niagara* and not Petitioner.

Under date of October 4, 1941, Respondent filed a "Motion for Better Statement of Claim".

Counsel for Petitioner, having finally been given copies of the processing tax returns of Petitioner and Niagara, taken from the files of Niagara, on November 21, 1941, filed an "Amendment to Petition in Response to Motion for Better Statement of Claim".

On November 26, 1941, Respondent filed a "Renewal of Motion for Better Statement of Nature of Claim to Apply to Petition as Amended".

Argument was heard on December 19, 1941, the said motion was denied and Petitioner was allowed to file an Amended Petition, which was filed December 29, 1941.

On February 16, 1942, Respondent filed a "Motion to Dismiss" with the United States Processing Tax Board of Review. Argument was heard, and this motion was summarily denied on August 5, 1942.

On August 21, 1942, Respondent filed his Answer.

On October 22, 1942, the case was set for hearing on the merits by the United States Processing Tax Board of Review on February 8, 1943.

On October 21, 1942, the Revenue Act of 1942 became law, pursuant to Section 510 of which The Tax Court of the United States was given jurisdiction of cases then pending before the United States Processing Tax Board of Review, the life of which said Board was terminated as of December 31, 1942. Accordingly, the hearing on the merits in this case was not had by said Board.

On January 29, 1943, Respondent filed a "Motion to Dismiss on Jurisdictional Grounds" with The Tax Court of the United States.

After argument, the said Motion was granted, on May 4, 1943.

II.

Decision to be Reviewed

The Tax Court of the United States, on May 4, 1943, promulgated its opinion that it has no jurisdiction to review the disallowance by the Commissioner of the claim for refund filed by Petitioner.

Pursuant thereto, the Court, on May 4, 1943, entered its Order that "the proceeding is dismissed for lack of jurisdiction".

III.

Court in Which Review is Sought

The said Petitioner being aggrieved by the conclusions of law contained in said decision and order desires to obtain a review thereof by the United States Circuit Court of Appeals for the Second Circuit.

Wherefore, it petitions that a transcript of record be prepared in accordance with the rules of the United States Circuit Court of Appeals for the Second Circuit, and transmitted to the said Court for filing and appropriate action, to the end that the errors complained of may be reviewed and corrected by said Court.

IV.

Facts Necessary to Establish Jurisdiction

Petitioner, a New York Corporation, during the years 1933 to 1936, had, and now has, its principal office at Niagara Falls, New York, and filed processing tax returns with, paid processing taxes to, and filed claims for the refund of such processing taxes with, the Collector of Internal Revenue for the 28th District of New York, at Buffalo, New York, in accordance with the Agricultural Adjustment Act of May 12, 1933, as amended, and pertinent regulations, and with the Revenue Acts of 1932, 1934, 1936 and 1939, as amended. The Respondent is the duly appointed qualified and acting Commissioner of Internal Revenue, appointed and holding office by virtue of the laws of the United States.

The claim was filed August 15, 1938, the final date for filing being December 31, 1939, under the Revenue Act of 1939. The notice of the disallowance of the claim was sent by registered mail to Petitioner at Niagara Falls, New York, under date of May 24, 1941. The Petition was filed with the United States Processing Tax Board of Review on August 20, 1941, and an Amended Petition was filed December 29, 1941. The Petition and Claim for Refund was dismissed by The Tax Court of the United States on May 4, 1943.

ASSIGNMENTS OF ERROR

1. The Court erred in not accepting as true the uncontroverted facts set forth in the affidavits filed in opposition to the "Motion to Dismiss on Jurisdictional Grounds", which facts support the Court's jurisdiction of the review of the Commissioner's disallowance of the claim for refund.

2. The Court erred in not holding that the Commissioner has waived any insufficiency in the claim for refund and that it has jurisdiction to review his disallowance thereof.

3. The Court erred in holding that it has no jurisdiction to review the disallowance of the claim for refund.

4. The Court erred in failing and refusing to hold a hearing on the merits of the claim for refund.

(Signed) R. A. O'CONNOR,
President

(Signed) PREW SAVOY,
Attorney for Petitioner.

VERIFICATION

RAYMOND A. O'CONNOR, being duly sworn, says that he is the President of Petitioner, and as such, is duly authorized to verify the foregoing petition for review, by the United States Circuit Court of Appeals for the Second Circuit, of the decision in the above entitled case.

That he has read said petition and knows the contents thereof, and that the facts stated therein are true except such facts as may be stated on information and belief, and those facts he believes to be true.

(Signed) RAYMOND O'CONNOR.

SUBSCRIBED and SWORN to before me this 14th day of July, 1943.

(Signed) JOHN D. MAHONEY,
Notary Public.

My Commission expires March 31, 1945.

The Tax Court
of the United States
FILED
July 27, 1943
Enr.
Dkt.
Cal.
Stat.

IN THE TAX COURT OF THE UNITED STATES

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. P. T. 398

NOTICE OF FILING OF PETITION FOR REVIEW

To J. P. Wenchel, Esq.,
Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

You are hereby notified that Angelus Milling Company did, on the 27th day of July, 1943, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review, by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the said The Tax Court of the United States heretofore rendered in the above-entitled case. A copy of the petition for review and the assignment of errors as filed is hereto attached and served upon you.

Dated at Washington, D. C., this 27th day of July, 1943.

(Signed) PREW SAVOY.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of er-

rors mentioned herein, is hereby acknowledged this 27th day of July, 1943.

J. P. WENCHEL,
Attorney for Respondent.

The Tax Court
of the United States
LODGED
Sept. 16, 1943
Dkt. .....
Cal. .....
Stat. .....

The Tax Court
of the United States
FILED
Sept. 22, 1943
Enr. .....
Dkt. .....
Cal. .....
Stat. .....

IN THE TAX COURT OF THE UNITED STATES

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. P. T. 398

STATEMENT OF EVIDENCE

The above case came on for hearing before the Honorable Percy S. Crewe, Member of the United States Processing Tax Board of Review, upon Respondent's Motion for Better Statement of Claim, filed October 4, 1941, and renewed November 26, 1941, which said Motion was denied January 20, 1942; upon Respondent's Motion to Dismiss, filed February 16, 1942, before the Honorable John W. Edwards, Member of said Board, which said Motion was denied August 5, 1942; and before the Honorable J. E. Murdock, Judge of The Tax Court of the United States, upon Respondent's Motion to Dismiss on Jurisdictional grounds, filed January 29, 1943, which mo-

tion was granted on May 4, 1943; there being present the Petitioner and Respondent by their respective counsel.

No testimony was heard. In addition to the Exhibits attached to the Pleadings, all of the Exhibits material and necessary in the opinion of Petitioner to the determination of the assignments of error set out by Petitioner in its Petition for Review by this Court of the decision of The Tax Court of the United States, to be attached hereto and made a part of this Statement of Evidence, are:

Exhibits filed by the Petitioner with the United States Processing Tax Board of Review:

1. Monthly Return of Processor of Wheat, P. T., Form 1, filed by Niagara Falls Milling Co. and Angelus Milling Company, Inc., on August 25, 1933, on account of processings of wheat in the month of July, 1933, in the mill at *Lockport*, New York, with the Collector of Internal Revenue for the 28th New York District.

The returns on account of such processings, at Lockport, New York, for August, 1933, filed September 30, 1933; for September, 1933, filed October 31, 1933; for October, 1933, filed December 1, 1933; for November, 1933, filed January 2, 1934; for December, 1933, filed January 31, 1934; for January, 1934, filed February 28, 1934; for February, 1934, filed March 31, 1934; for March, 1934, filed April 30, 1934; for April, 1934, filed May 31, 1934; for May, 1934, filed June 30, 1934; for June, 1934, filed July 31, 1934; for July, 1934, filed August 31, 1934; for August, 1934, filed September 29, 1934; for September, 1934, filed October 31, 1934; for October, 1934, filed November 30, 1934; for November, 1934, filed December 31, 1934; for December, 1934, filed January 31, 1935; and for January, 1935, filed February 28, 1935 (except as to the number of bushels of wheat processed and the amount of tax) are in substance the same as the aforesaid return filed August 25, 1933, and therefore are not reproduced in this record.

2. Monthly Return of Processor of Wheat, P. T. Form 1, filed by Niagara Falls Milling Co., on April 1, 1935, on ac-

count of processings of wheat in the month of February, 1935, in the mill at *Lockport*, New York, with the Collector of Internal Revenue for the 28th New York District.

The returns on account of such processings, at Lockport, New York, for March, 1935, filed April 30, 1935; for April, 1935, filed May 31, 1935; for May, 1935, filed July 1, 1935; for June, 1935, filed July 31, 1935; for July 1935, filed August 31, 1935; for August, 1935, filed September 30, 1935; for September, 1935, filed October 31, 1935; for October, 1935, filed November 30, 1935; and for November, 1935, filed December 31, 1935 (except as to the number of bushels of wheat processed and the amount of tax) are in substance the same as the aforesaid return filed April 1, 1935, and therefore are not reproduced in this record.

3. Monthly Return of Processor of Wheat, P. T. Form 1, filed by Niagara Falls Milling Co., on April 1, 1935, on account of processings of wheat in the month of February, 1935, in the mill at *Middleport*, New York, with the Collector of Internal Revenue for the 28th New York District.

The returns on account of such processings, at Middleport, New York, for March, 1935, filed April 30, 1935; for April, 1935, filed May 31, 1935; for May, 1935, filed July 1, 1935; for June, 1935, filed July 31, 1935; for July, 1935, filed August 31, 1935; for August, 1935, filed September 30, 1935; for September, 1935, filed October 31, 1935; for October, 1935, filed November 30, 1935; and for November, 1935, filed December 31, 1935 (except as to the number of bushels of wheat processed and the amount of tax) are in substance the same as the aforesaid return filed April 1, 1935, and for that reason are not being reproduced in this record.

Exhibits filed by the Petitioner with The Tax Court of the United States:

4. Letter of November 18, 1938, from J. Bernard Lieben, General Deputy Collector in the 28th New York District, addressed to Mr. Harry Dickinson, Lockport, New York.

5. Affidavit of Jackson A. Lyon, dated February 8, 1943.

6. Affidavit of Raymond A. O'Connor, dated February 8, 1943.

The Petitioner, by its attorney, Prew Savoy, tenders and presents the foregoing as a Statement of Evidence and exhibits in this case and prays that the same be approved by The Tax Court of the United States and made a part of the Record in this cause.

(Signed) PREW SAVOY,
Attorney for Petitioner.

No objections for the purpose of the record on this appeal.

(S) J. P. WENCHEL,
RFD.

APPROVED AND ORDERED FILED this 22nd day of Sept., 1943.

J. E. MURDOCK,
Judge.

U. S. PROCESSING TAX BOARD OF REVIEW DKT. NO. 398, P.T. IN EVIDENCE FOR PETITIONER EXHIBIT #1. JUNE 4, 1942.

P. T. Form 1
Int. Rev. Service

MONTHLY RETURN OF PROCESSOR OF WHEAT
To be executed and filed in duplicate with Collector for district.

RETURN RECEIVED AUG 25 1933 28TH NEW YORK

Name of Processor: NIAGARA FALLS MILLING CO. ANCHUS MILLING COMPANY, INC. Dist.

Principal Office: Lockport, New York Month of: July

Location of Processing Plant: Lockport, New York Aug. 24 1933

Return of all wheat on hand, received, disposed of, and in process, products therefrom, and tax due thereon, processing for the producer and for export. Also wheat delivered to producers and removed for export without the payment of tax, and the amount of tax due by the processor named for the month specified.

1. Wheat in process during month: Pounds 3,290,720

Articles	(f) Processed	(g) Delivered to producer*	(h) Removed for export
2. Flour	Pounds	Pounds	Pounds
(a) Whole wheat and graham	30,882		
(b) Other than whole wheat and graham	1,259,020		
(c) Semolina and farina			
Cereal Preparations			
(d) Whole wheat type, chiefly of whole wheat			
(e) Other except those chiefly of bran			
3. Yield Bushels per barrel	4.86 Clean		
4. Less wheat processed for producers & for export			

5. Net taxable processed wheat (item 1 less 4)	3,290,720
6. Bushels of wheat processed (item 5 ÷ 60)	48,012
7. Rate of tax per bushel of wheat of 60 pounds processed	$0.30
8. Amount of tax	$13,503.60
9. Credit (if any) per claim attached	
10. Total tax due	$13,503.60

I swear (or affirm) that this return is a true and correct statement of all wheat received, disposed of, put in process, and on hand at the beginning, and at the end of the month, and screenings received during the month; of the quantities of wheat processed for, and products therefrom, delivered to producers, and removed for export, and of the amount of tax due by the processor named for the month specified.

Sworn to and subscribed before me this 24th day of August 1933

C. Lee Chamberlain - Notary Public
(Name or witness) (Title or witness)

Signed: W. Kelsman Secy
(State whether owner of business, member of firm, or if officer of corporation, or duly authorized manager or agent, give title)

*Entries in this column must be supported by one copy of each producer's affidavit or certificate, which must be attached to this return.

See also instructions on back.

(over) Aff. for Extension of time for 90 days for payment

ACCOUNT OF WHEAT

	Wheat	
	Total Bushels	Total Pounds
On hand, beginning of month	55,004	1,980,040
Received during month	50,700	3,042,540
Totals	85,795	5,087,580
Shipped or delivered during month	[illegible]	[illegible]
Ground not in form of flour, for feed during month	[illegible]	[illegible]
Destroyed, or otherwise disposed of during month	None	[illegible]
On hand, end of month	38,697	1,315,698
Put in process during month	45,018	2,700,780
To balance (analyze below)	144	8,640
Totals	83,795	5,087,580
Screenings received during month	2,756-1/3	184,102

Analysis:

Loss in Milling

INSTRUCTIONS

(see also Regulations 81 and Treasury Decision 4371)

1. Law.- Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, a processing tax of 30 cents per bushel of wheat of 60 pounds put in process became effective from the first moment of July 9, 1933. Article 2(h)(1) of Regulations 81 defines processing; Article 2(a)(1) relates to processing for producer (see also Art. 2(c) of T.D. 4371), Articles 27 and 28 to Existing Contracts, and Article 31 to Credit and Refund.

2. Returns and Payment of Tax.- All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering taxes due for any month, must be in the hands of the collector of internal revenue (or his authorized representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the Collector at Baltimore, Maryland) on or before the last day of the succeeding month; however, the Commissioner has authority under the Law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponement of payment of the tax, see article 26(a), Regulations 81. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or rever agent. If the total amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two subscribing witnesses in lieu of an oath.

3. Records.- Each person required to file a return on this form and pay tax shall preserve for a period of at least 4 years from the date when the tax became due accurate records and accounts of all transactions involving the processing of wheat and products thereof and of all transactions involved in any way in any claim for refund, for abatement or for credit. In case of processing exempt from tax, the records shall be kept for a period of at least a year from the last day of the month in which the wheat was processed. These records and accounts shall be kept on file at his principal office or at some other accessible and safe location. He shall also retain a copy of the return on the premises. The books, papers, and documents referred to shall be open for inspection, during usual business hours, by any internal revenue officer. Such records shall contain sufficient information to enable the Commissioner to determine whether the correct amount of tax has been paid. See also Article 19, Regulations 81.

4. Penalties.- Failure to file on time, 25 per cent of tax. Failure to pay tax when due before assessment, interest at the rate of 1 per cent a month. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by the Commissioner, 5 per cent penalty and 1 per cent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

Return
Received
Sept. 30, 1933
28th
New York

P. T. Form 1
Treasury Dept.
Int.Rev.Service

MONTHLY RETURN OF PROCESSING OF WHEAT
To be executed in triplicate in accordance with

Name of Processor: NIAGARA FALLS MILLING CO.
AMOSKEAG MILLING COMPANY, INC.

Principal Office: Lockport, New York Month of August,

Location of Processing Plant: Lockport, N. Y. Sept. 18, 1933

I hereby report all wheat on hand, received, started in process, produced (including the final domestic processing thereof, processing for the producer and for export), products delivered to producers and removed for export with the payment of the tax, and the amount of tax due, by the processor named for the month specified.

1. Wheat put in process during month: 2,000,000

Articles	Produced	Delivered to producers	Removed for export Barrels
2. Flour			
a) Whole wheat and graham	IV,[illegible]		
b) Other than whole wheat and graham	2,[illegible]		
c) Semolina and farina			
Cereal Preparations			
d) Whole wheat type, chiefly of whole wheat			
e) Other cereal types chiefly of wheat			
3. TOTAL	[illegible]		

4. Less wheat processed for producers & for export: [illegible]
5. Net taxable processed wheat (item 3 less 4): [illegible]
6. Bushels of wheat processed (item 5 ÷ 60): [illegible]
7. Rate of tax per bushel of wheat of 60 pounds processed: [illegible]
8. Amount of tax: $16,[illegible].00
9. Credit (if any) per statement attached:
10. Total tax due:

I swear (or affirm) that this return is a true and correct statement of all wheat received, disposed of, in process, on hand at the beginning, and at the end of the month and the quantities received during the month, of the quantities of wheat processed for, and removed therefrom, delivered to producers, and removed for export, and of the amount of tax due by the processor named, for the month specified.

Sworn to and subscribed before me this [illegible] day of [illegible], 193[illegible]

Signed: [illegible]

(State whether owner of business, member of firm, or if officer of corporation, or if duly authorized manager or agent, give title)

(Name or witness) (Title or witness)

*Entries in this column must be supported by the copy of each producer's affidavit or certificate, which must be attached to this return.

(over)

PRINT IS BAD

[illegible] OF WHEAT

at

	Total Pounds	Total Pounds
On hand, beginning of month	[illegible]	[illegible]
Received during month	[illegible]	[illegible]
Totals	[illegible]	[illegible]
Shipped or delivered during month		
Ground not in form of flour, for feed during month		
Destroyed, or otherwise disposed of during month		
On hand, end of month	[illegible]	[illegible]
Put in process during month	[illegible]	[illegible]
To balance (analyse below)		
Totals	[illegible]	[illegible]
[illegible] received during month	[illegible]	[illegible]

Loss in Milling

INSTRUCTIONS

(See also Regulations 81 and Treasury Decision 4371)

1. Law.- Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, a processing tax of 30 cents per bushel of wheat of 60 pounds put in process became effective from the first moment of July 9, 1933. Article 2(h)(1) of Regulations 81 defines processing; Article 9(a)(1) relates to processing for producer (see also Art. 2(c) of T.D. 4371), Articles 27 and 28 to Existing Contracts, and Article 38 to Credit and Refund.

2. Returns and Payment of Tax.- All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering taxable [illegible] any month, must be in the hands of the collector of internal revenue (or [illegible] and representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the Collector at Baltimore, Maryland) on or before the last day of the succeeding month. However, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponement of payment of the tax, see Article 26(c), Regulations 81. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or revenue agent. If the taxable amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two subscribing witnesses in lieu of an oath.

3. Records.- Each person required to file a return on this form and pay tax shall preserve for a period of at least 4 years from the date when the tax became due accurate records and accounts of all transactions involving the processing of wheat, and products thereof and of all transactions involved in any way in any claim for refund, for abatement or for credit. In case of processing exempt from tax, the records shall be kept for a period of at least a year from the last day of the month in which the wheat was processed. These records and accounts shall be kept on file at his principal office or at some other accessible and safe location. He shall also retain a copy of the return on the premises. The books, papers, and documents referred to shall be open for inspection, during usual business hours, by any internal revenue officer. Such records shall contain sufficient information to enable the Commissioner to determine whether the correct amount of tax has been paid. See also Article 10, Regulations 81.

4. Penalties.- Failure to file on time, 25 per cent of tax. Failure to pay on time before assessment, interest at the rate of 1 per cent a month. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by the Commissioner, 5 per cent penalty and 1 per cent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

PRINT IS BAD

P.T. Form 1
TREASURY DEPARTMENT
Internal Revenue Service

RETURN RECEIVED
OCT 31 1935
28TH
NEW YORK

MONTHLY RETURN OF PROCESSOR OF WHEAT

To be executed and filed in duplicate with collector for district

NIAGARA FALLS MILLING CO.

Name of processor ARCHLOS MILLING COMPANY, INC. District

Principal office Lockport, N. Y. Month of September

Location of processing plant Lockport, N. Y. October 30, 1935

Return of all wheat on hand, received, disposed of, and put in process; production from the first domestic processing thereof; processing for the producer and for export; products delivered to producers and removed for export without the payment of tax, and the amount of tax due, by the processor named, for the month specified.

		(1) Processed	(2) Deductions by Processor*	(3) Returned per Schedule	
1	Wheat put in process during month				Pounds 3,018,000
2	STOCKS:	Pounds	Pounds	Pounds	
	(a) Whole wheat and graham, etc.	97,618			
	(b) Other than whole wheat and graham	2,278,584			
	(c) Semolina and farina				
	CEREAL PREPARATIONS:				
	(d) Whole wheat type, chiefly of whole wheat				
	(e) Other, except those chiefly of bran				
3	Yield bushels per barrel				
4	Less wheat processed for producers and for export				
5	Net taxable processed wheat (item 1 less 4)				3,018,000
6	Bushels of wheat processed (item 5 ÷ 60)				50,300
	Rate of tax per bushel of wheat of 60 pounds processed				$0.30
8	Amount of tax				$15,090.00
9	Credit (if any) per claim attached				
10	TOTAL TAX DUE				$15,090.00

I swear (or affirm) that this return is a true and correct statement of all wheat received, disposed of, put in process and on hand at the beginning and at the end of the month, and all gainings received during the month, of the quantities of wheat processed for, and products therefrom, delivered to producers, and removed for export, and of the amount of tax due by the processor named for the month specified.

Sworn to and subscribed before me this 30th day of October, 1935

Chas. F. Luckmann Jr. - Notary Public
(Name of officer)

Signed [signature]
(Name of corporation, partnership, or individual)

* Entries in this column must be supported by one copy of each producer's affidavit or certificate, which must be attached to this return the date of acquisition or both.

(over) 1-0/-00

Pick up & retain for payment of tax

ACCOUNT OF WHEAT

	WHEAT	
	[illegible]	[illegible]
On hand, beginning of month	38,030	2,281,800
Received during month	52,366	3,141,960
TOTALS	90,396	5,423,760
Shipped or delivered during month		
Ground not in form of flour, for feed during month		
Destroyed, or otherwise disposed of during month		
On hand, end of month	39,943	2,396,580
Put in process during month	50,250	3,015,000
To balance (analyze below)	203	12,180
TOTALS	90,396	5,423,760
Screenings received during month	1817.4	109,044

Analysis ..... Loss in Milling.

INSTRUCTIONS

(See also regulations 91 and Treasury Decision 4271)

1. **Law.**—Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, a processing tax of 30 cents per bushel of wheat (if no prior tax has been paid on processing for producer (see also art. 4(a) of T.D. 4327), effective as fixed by existing contracts, and article 31 to credit and refund.

2. **Returns and Payment of Tax.**—All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Returns, with remittance, covering taxes due for any month, must be in the hands of the collector of internal revenue (or his authorized representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the collector at Baltimore, Md.) on or before the last day of the succeeding month. However, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponements of payment of the tax, see article 26 (c) regulations 91. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or revenue agent. If the total amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two subscribing witnesses in lieu of an oath.

3. **Records.**—Each person required to file a return on this form and pay tax shall preserve for a period of at least 4 years from the date when the tax became due accurate records and accounts of all transactions involving the processing of wheat and products thereof and of all transactions involved in any way in any claim for refund, for abatement, or for credit. In case of processing exempt from tax, the records shall be kept for a period of at least a year from the last day of the month in which the wheat was processed. These records and accounts shall be kept on file at his principal office or at some other convenient and safe location. He shall also retain a copy of the return on the premises. The books, papers, and documents referred to shall be open for inspection, during usual business hours, by any internal revenue officer. Such records shall contain sufficient information to enable the Commissioner to determine whether the correct amount of tax has been paid. (See also article 10, regulations 91.)

4. **Penalties.**—Failure to file on time 25 percent of tax. Failure to pay on time before assessment, interest at the rate of 1 percent a month. Failure to pay within 10 days after number of notice and demand based on assessment made by the Commissioner 5 percent penalty and 1 percent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

C.2

PRINT IS BAD

P.T. Form 1
TREASURY DEPARTMENT
Internal Revenue Service

RETURNS RECEIVED
DEC 1 1933
BUFFALO
NEW YORK

MONTHLY RETURN OF PROCESSOR OF WHEAT

To be executed and filed in duplicate with collector for district

Name of processor: Niagara Falls Milling Co., Angelus Milling Co., Inc. District

Principal office: Lockport, N. Y. Month of: October

Location of processing plant: Lockport, N. Y. Nov. 22 1933

Return of all wheat on hand, received, disposed of, and put in process; production from the first domestic processing thereof; processing for the producer and for export; products delivered to producers and removed for export without the payment of tax, and the amount of tax due, by the processor named, for the month specified.

1 Wheat put in process during month: Pounds 3,243,280

2. ARTICLES	(1) PROCESSED	(2) DELIVERED TO PRODUCER	(3) REMOVED FOR EXPORT
	Pounds	Pounds	Pounds
FLOUR			
(a) Whole wheat and graham	47,824		
(b) Other than whole wheat and graham	3,681,280		
(c) Semolina and farina			
CEREAL PREPARATIONS			
(d) Whole wheat type, chiefly of whole wheat			
(e) Other, except those chiefly of bran			

3. Yield ..... bushels per barrel
4 Less wheat processed for producers and for export

5 Net taxable processed wheat (item 1 less 4) 3,243,280
6 Bushels of wheat processed (item 5 ÷ 60) 54,388
Rate of tax per bushel of wheat of 60 pounds processed $0.30
8 Amount of tax 17,816.40
9 Credit (if any) per claim attached
10 TOTAL TAX DUE

I swear (or affirm) that this return is a true and correct statement of all wheat received, disposed of, put in process, and on hand at the beginning and at the end of the month, and screenings received during the month, of the quantities of wheat processed for, and products therefrom, delivered to producers, and removed for export, and of the amount of tax due by the processor named for the month specified.

Sworn to and subscribed before me this 24th day of November 1933

Signed: J. Schuman Secy

Notary Public

(OVER)

STAT

B-1

ACCOUNT OF WHEAT

	WHEAT	
	Total Bushels	Total Pounds
On hand, beginning of month	38,943	2,398,500
Received during month	64,139	3,966,500
Totals	106,082	6,364,920
Shipped or delivered during month		
Ground not in form of flour, for feed during month		
Destroyed, or otherwise disposed of during month		
On hand, end of month	42,562	2,550,120
Put in process during month	59,358	3,813,800
To balance (analyze below)	4,162	931,000
Totals	106,082	6,364,920
Screenings received during month	4,642	278,520
Analysis		

INSTRUCTIONS

(See also regulations 81 and Treasury Decision 4371)

1. **Law.**—Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, a processing tax of 30 cents per bushel of wheat of 60 pounds net is process became effective from the first moment of July 9, 1933. Article 2(a)(1) of regulations of defines processing; article 9(a) (1) relates to processing for producer (see also art. 2(c) of T.D. 4371), articles 37 and 38 to existing contracts, and article 11 to credit and refund.

2. **Returns and Payment of Tax.**—All taxes are due and payable without any assessment by the Commissioner or notice from collector. Return, with remittance, covering taxes due for any month, must be in the hands of the collector of internal revenue (or an authorized representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the collector at Baltimore, Md.) on or before the last day of the succeeding month; however, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponement of payment of the tax, see article 28 (c), regulations 81. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or revenue agent. If the total amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two citizens witnesses in lieu of an oath.

3. **Records.**—Each person required to file a return on this form and pay tax shall preserve for a period of at least 4 years from the date when the tax became due accurate records and accounts of all transactions involving the processing of wheat, and products thereof and of all transactions involved in any way in and claims for refund, for abatements, or for credits. In case of proceedings exempt from tax, the records shall be kept for a period of at least a year from the last day of the month in which the wheat was processed. These records and accounts shall be kept on file at his principal office or at some other accessible and safe location. He shall also retain a copy of the return on the premises. The books, papers, and documents referred to shall be open for inspection during usual business hours, by any internal revenue officer. Such records shall contain sufficient information to enable the Commissioner to determine whether the correct amount of tax has been paid. (See also article 10, regulations 81.)

4. **Penalties.**—Failure to file on time, 25 percent of tax. Failure to pay on time before assessment, interest at the rate of 1 percent a month. Failure to pay within 10 days after issuance of notice and demand for assessment approved by the Commissioner, 5 percent penalty and 1 percent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

PRINT IS BAD

P. T. Form 4
TREASURY DEPARTMENT
Internal Revenue Service
Revised August 1936

MONTHLY RETURN OF PROCESSOR OF WHEAT

For month of February, 193 8

To be executed in duplicate and filed with the Collector of Internal Revenue for your district on or before the last day of following month

PRINT NAME AND ADDRESS PLAINLY BELOW

NIAGARA FALLS MILLING CO.
(Name)

Market St. Lockport, N. Y.
(Street and number, or rural route) (Post office) (State)

Lockport, N. Y.
(Location of processing plant, if other than one given above)

ORIGINAL RETURN RECEIVED APR 1 1938 20TH NEW YORK

Dist. .....

193 ..... (Mo.) (Day) (Year)

Amount paid $ .....

WHEAT

(a) Measure	(b) On hand beginning of month	(c) Received during month	(d) Shipped, destroyed, or otherwise disposed of during month (state separately)	(e) Owned and in bond at close of month	(f) On hand end of month	(g) Tax different rate	(h) Tax
Bushels	14,695	33,119			7,000	.0075	41.81
Pounds	881,580	1987,140			420,340	.0075	2,520.00
Tenings pounds					35,800	"	

1. Wheat processed for producers during month (included in Item 1) ..... Pounds .....
2. Wheat processed under bond for exportation without payment of tax (included in Item 1). Pounds .....
4. Total wheat processed for producers and for exportation (Item 2 plus Item 3) to be deducted from Item 1 ..... Pounds .....
5. Net taxable pounds of wheat processed during month (Item 1 less Item 4) .....
6. Rate of processing tax (30) cents per bushel of 60 pounds), per pound of wheat .....
7. Amount of tax .....
8. Credit (if any) per ..... claim(s) on P T. Form(s) ..... and ..... attached .....
9. TOTAL TAX DUE ..... dollars, and ..... cents

10. Article	Pounds of wheat represented by products and product of each article	Total quantity of each article produced from wheat and in process during the month	Total quantity of each article produced from wheat processed: For producers	For export	Quantity withdrawn for consumption	Quantity withdrawn for export
		Pounds	Pounds	Pounds	Barrels	Pounds
Flour: Whole wheat and graham		25,284				
Other than whole wheat and graham		1,810,644				
CEREAL PREPARATIONS: Flaked, rolled, cut, cracked, or whole wheat						
Other, except those chiefly of bran						

The above is an itemized account of processing of wheat, and of the products of such processing, and of the amount of tax due on such processing by the undersigned processor for the month specified.

(Seal)

(Signed) NIAGARA FALLS MILLING CO.
(If corporation, give name in full)

Attest ..... By ..... Vice Pres.
(Secretary) (President or Vice President)

I swear (or affirm) that all of the statements made above and on the back hereof are true and correct.

(Signed) .....
(Individual, member of firm, or officer of corporation)

Sworn to and subscribed before me this 1st day of April, 1938

Verna E. Zanner
Signature and title of officer authorized to administer oaths — Notary Public

NOTE.—If the processing tax shown by this return to be due is $10 or less, this return may be signed and acknowledged before two witnesses instead of before an officer of any such.

Acknowledged and subscribed in our presence

..... (Name of witness) ..... (Address)

this ..... day of 193

..... (Name of witness) ..... (Address)

[OVER]

STAT

Analysis of entry (g) on face hereof .....

.....

.....

.....

INSTRUCTIONS

(See also Regulations 81 and Treasury Decision 4300)

1. **Processing Tax.**—(a) Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, the processing tax on the first domestic processing of wheat became effective at the first moment of July 9, 1933. The rate of such tax is 30 cents per bushel of 60 pounds.

(b) In the case of wheat, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only (Art. 2 (h) (1), Regs. 81). The processing of that portion of wheat retained as toll is subject to processing tax.

(c) The term "wheat" means wheat of any kind, classification, type, or grade. The weight of wheat subject to the processing tax shall be the weight of clean wheat not artificially dried.

(d) Each processor of wheat shall keep a record of wheat and make report thereof as reports each calendar month, as to (1) the quantity on hand at the beginning of the period, (2) the quantity received during the period, (3) the quantity shipped or delivered during the period, (4) the quantity ground for feed purposes only during the period, (5) the quantity on hand at the end of the period, and (6) the quantity put in process during the period (Art. 2 (h), T.D. 4391).

(e) The processing of wheat for the producer thereof for consumption by his family, employees, or household is exempt from the processing tax. This applies to what is known as custom milling (for toll or for money), but not to cases such as, for example, where a producer delivers wheat to an elevator or store in exchange there for flour. Nor is there any exemption where a producer who has his wheat processed into flour receives a kind or grade of flour other than that which could have been processed from the wheat delivered by such producer (Art. 9 (a), Regs. 81, and Art. 3 (c), T.D. 4391).

2. **Execution of Return.**—(a) The quantities of wheat should be shown in each column in both bushels and pounds. The sum of the number of bushels, as well as the number of pounds, entered in the respective columns (b) and (c) should equal the sum of the respective entries in columns (d), (e), (f), (g), and (h), of the wheat account. The quantity of wheat shipped or delivered and the quantity of wheat destroyed should be shown separately in column (d). The analysis of the entry in column (g) (to balance) should be made in the space provided above. The quantity of wheat put in process during the month entered in column (h), also designated as item 1, should include all wheat processed during the month, except the quantity ground or cracked not in the form of flour for feed purposes only, which should be shown separately in column (e).

(b) The quantity of wheat, in pounds, processed for producers (item 2), and for export (item 3), should be shown separately on the face of the return, and the sum of items 2 and 3 should be deducted from item 1, to ascertain the net taxable pounds of wheat processed.

(c) The number of pounds of wheat required to produce a pound of each article, the total quantity of each article produced from the wheat processed, the quantity of each article produced from wheat processed for producers (the result of processing of the quantity entered under item 2), the quantity of each article produced from wheat processed under bond for export (the result of the processing of the quantity entered under item 3), the quantity of each article delivered to producers, supported by affidavits on P.T. Forms 20 (see par. (e) below), the quantity of each article removed for export, supported by entries for exportation on P.T. Forms 26 (see par. (f) below), must be shown in the spaces provided therefor under item 10. The quantities entered under item 10 shall not include any ingredient added to the wheat in the milling process, or to the articles produced, as in the case of the production of self-rising or blended flours.

(d) The name or description of the articles shown in affidavits on P.T. Forms 20, in entries for exportation on P.T. Forms 26, and in claims for credit must correspond with descriptions under the head of "Articles".

(e) One copy of each producer's affidavit or certificate on P.T. Form 20, received with respect to delivery to producers must be filed with the return to support claims for exemption from processing tax.

(f) One copy of each entry for exportation on P.T. Form 26, covering removal of each shipment from the place of processing during the month must be filed with the return in support of credit for processing under bond for export.

3. **Filing of Returns and Payment of Tax.**—All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering taxes due for any month, must be in the hands of the collector of internal revenue (or his authorized representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the collector at Baltimore, Md.) on or before the last day of the succeeding month, however, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponement of payment of the tax, see Article 26 (c), Regulations 81. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or revenue agent. If the total amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two subscribing witnesses in lieu of an oath.

4. **Records.**—Each person required to file a return on this form and pay tax shall preserve accurate records and accounts of all transactions involving the processing of wheat and products thereof, of all transactions involved in any way in any claim for refund, for abatement, or for credit and of processing exempt from tax. (See Article 10, Regulations 81, also Article 3 (b), T.D. 4391.)

5. **Penalties.**—Failure to file on time, 25 percent of tax. Failure to pay on time before assessment, interest at the rate of 1 percent a month. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by the Commissioner, 5 percent penalty and 1 percent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

C-2

PRINT IS BAD

Return
Received
Apr. 1, 1935
28th
New York

P T Form 1

ORIGINAL

MONTHLY RETURN OF PROCESSOR OF WHEAT

For month of February 1935

PRINT NAME AND ADDRESS PLAINLY BELOW

NIAGARA FALLS MILLING CO.

Middleport, N. Y.

Middleport, N. Y.

WHEAT

	1. Stock on hand beginning of month	2. Received during month	3. Disposed of or used otherwise than by milling during month (attach explanation)	4. Returned to or taken from mill during month	5. On hand end of month	6. To be milled during the month	7. Put in process during month
Bushels		16,532			1,900	530	18,302
Pounds		1,111,920			114,000	19800	978,120
Running pounds					13,226		

2. Wheat processed for producers during month (included in item 1) ..... Pounds .....
3. Wheat processed under bond for exportation without payment of tax (included in item 1) ..... Pounds .....
4. Total wheat processed for producers and for exportation (item 2 plus item 3) to be deducted from item 1 ..... Pounds .....
5. Net taxable pounds of wheat processed during month (item 1 less item 4) 978,120
6. Rate of processing tax (30 cents per bushel of 60 pounds), per pound of wheat ..... .00 500
7. Amount of tax $4,890.60
8. Credit (if any) per ..... claim(s) on P T Form(s) ..... and ..... attached ..... dollars, and ..... cents $4,890.60
9. Total tax due

10. Article	Pounds of wheat processed in products shown in item 11 (each grade)	Total quantities of each article produced during month (pounds)	Total quantities of each article produced from wheat processed (pounds)		Quantity sold or removed for consumption (pounds)	Quantity sold for export (pounds)
			For producers	For export		
Flour						
Whole wheat and graham						
Other than whole wheat and graham		786,548				
Cereal preparations (milled wheat type, chiefly of whole wheat)						
Other, except those chiefly of bran						

The above is an itemized account of processing of wheat and of the products of such processing, and of the amount of tax due on such processing by the undersigned processor for the month specified.

(Seal)

(Signed) NIAGARA FALLS MILLING CO.

Attest .....

By R K Shaw Vice Pres.

I swear (or affirm) that all of the statements made above and on the back hereof are true and correct.

Sworn to and subscribed before me this 1st day of April 1935

(Signed) R K Shaw

Ulma S Pecore
Notary Public

Acknowledged and subscribed to in our presence

this ..... day of 193

(Name of witness) (Address)

(Name of witness) (Address)

[over]

4-1

Analysis of entry (g) on face hereof

13,220 lbs. of Sorghum plus 794 gals. of water - 19,000

INSTRUCTIONS

(See also Regulations 81 and Treasury Decision 4301)

1. **Processing Tax.**—(a) Pursuant to the provisions of the Agricultural Adjustment Act, by proclamation of the Secretary of Agriculture, and regulations established by him with the approval of the President, the processing tax on the first domestic processing of wheat became effective at the first moment of July 9, 1933. The rate of such tax is 30 cents per bushel of 60 pounds.

(b) In the case of wheat, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, including custom milling for toll as well as commercial milling, but shall not include the grinding or crushing thereof not in the form of flour for feed purposes only (Art. 2 (A) (1) Regs. 81). The processing of that portion of wheat ratained as toll is subject to processing tax.

(c) The term "wheat" means wheat of any kind, classification, type, or grade. The weight of wheat subject to the processing tax shall be the weight of clean wheat not artificially dried.

(d) Each processor of wheat shall keep a record of wheat and make report thereof as requests such schedule specifying (1) the quantity on hand at the beginning of the period, (2) the quantity received during the period, (3) the quantity disposed of or delivered during the period, (4) the quantity ground for feed purposes only during the period, (5) the quantity on hand at the end of the period, and (6) the quantity put in process during the period (Art. 3 (b), T.D. 4301).

(e) The processing of wheat (or the products thereof for consumption by his family, employees, or household is exempt from the processing tax. This applies to what is known as custom milling (for toll or for money), but not to cases such as, for example, where a producer delivers wheat to an elevator or store in exchange there for flour. Nor is there any exemption where a producer who has his wheat processed into flour receives a kind or grade of flour other than that which could have been produced from the wheat delivered by such producer (Art. 9 (c), Regs. 81, and Art. 3 (d), T.D. 4301).

2. **Execution of Return.**—(a) The quantity of wheat should be shown in each column in both bushels and pounds. The sum of the number of bushels, as well as the number of pounds, entered in the respective columns (b) and (c) should equal the sum of the respective entries in columns (d), (f), (g), and (h) of the wheat account. The quantity of wheat shipped or delivered and the quantity of wheat destroyed should be shown separately in column (d). The analysis of the entry in column (g) (the balance) should be made in the space provided above. The quantity of wheat put in process during the month entered in column (h), also designated as item 1, should include all wheat processed during the month, except the quantity ground or crushed not in the form of flour for feed purposes only, which should be shown separately in column (e).

(b) The quantity of wheat, in pounds, processed for producers (item 2), and for export (item 3), should be shown separately on the face of the return; and the sum of items 2 and 3 should be deducted from item 1, to ascertain the net taxable pounds of wheat processed.

(c) The number of pounds of wheat required to produce a pound of each article; the total quantity of each article produced from the wheat processed; the quantity of each article produced from wheat processed for producers (the result of processing of the quantity entered under item 2); the quantity of each article produced from wheat processed under bond for export (the result of the processing of the quantity entered under item 3), the quantity of each article delivered to producers, supported by affidavits on P.T. Forms 29 (see par. (e) below); the quantity of each article removed for export, supported by entries for exportation on P.T. Forms 26 (see par. (f) below), must be shown in the spaces provided therefor under item 10. The quantities entered under item 10 shall not include any ingredient added to the wheat in the milling process, or to the articles produced, or in the case of the production of self-rising or blended flours.

(d) The name or description of the articles shown in affidavits on P.T. Forms 29, in entries for exportation on P.T. Forms 26, and in claims for credit must correspond with descriptions under the head of "Articles".

(e) One copy of each producer's affidavit or certificate on P.T. Form 29, received with respect to delivery to producer must be filed with the return in support of claim for exemption from processing tax.

(f) One copy of each entry for exportation on P.T. Form 26, covering removal of each shipment from the place of processing during the month must be filed with the return in support of credit for processing under bond for export.

3. **Filing of Returns and Payment of Tax.**—All taxes are due and payable without any assessment by the Commissioner or notice from the collector. Return, with remittance, covering taxes due for any month, must be in the hands of the collector of internal revenue (or his authorized representative) of the district in which the principal place of business of the person making the return is located (or if he has no principal place of business in the United States, to the collector at Baltimore, Md.) on or before the last day of the succeeding month; however, the Commissioner has authority under the law to require the immediate filing of a return and payment of the tax, when such action becomes necessary. In regard to postponement of payment of the tax, see Article 26 (c), Regulations 81. Returns must be signed and sworn to before an officer authorized to administer oaths generally and under seal, or before a deputy collector of internal revenue or revenue agent. If the total amount of tax shown by a return to be due is $10 or less, the return may be acknowledged before two subscribing witnesses in lieu of an oath.

4. **Records.**—Each person required to file a return on this form and pay tax shall preserve accurate records and accounts of all transactions involving the processing of wheat and products thereof, of all transactions involved in any way in any claim for refund, for abatement, or for credit and of processing exempt from tax. (See Article 10, Regulations 81; also Article 8 (b), T.D. 4301.)

5. **Penalties.**—Failure to file on time, 25 percent of tax. Failure to pay on time before assessment, interest at the rate of 1 percent a month. Failure to pay within 10 days after issuance of notice and demand based on assessment approved by the Commissioner, 5 percent penalty and 1 percent interest a month on assessment. Severe penalties for willful failure to collect tax, pay tax, keep records, file returns, or for false or fraudulent return, are imposed by law.

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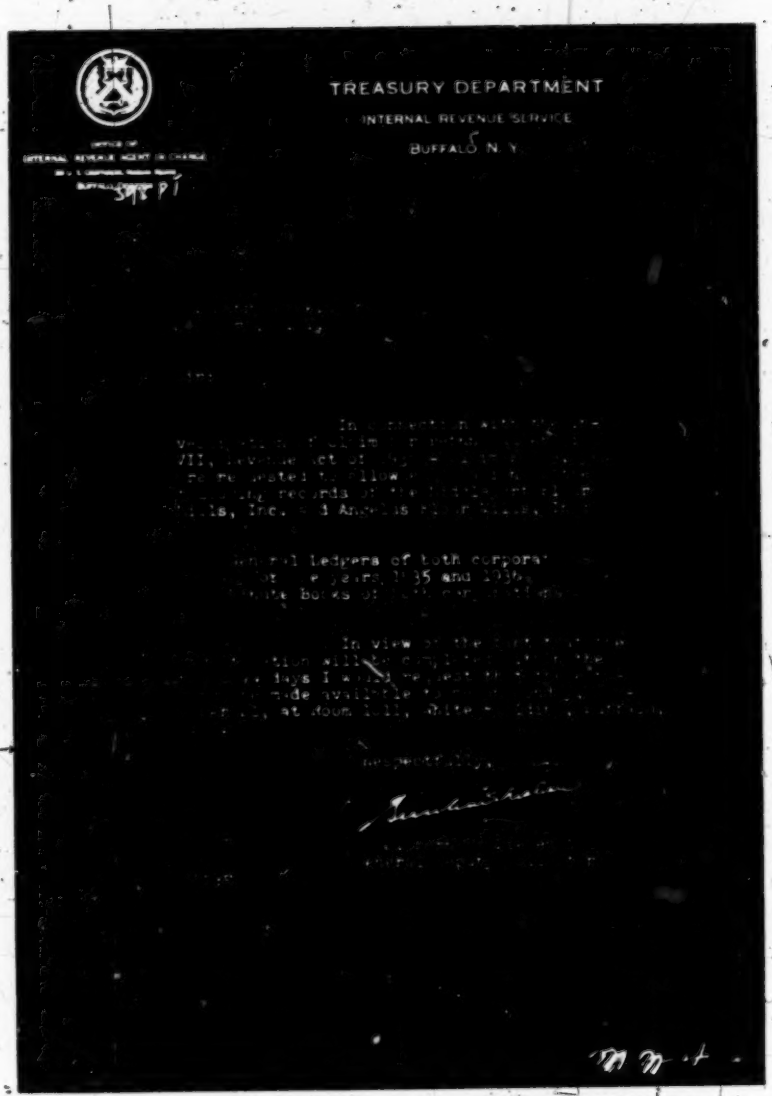


TREASURY DEPARTMENT

INTERNAL REVENUE SERVICE

BUFFALO N. Y.

A [illegible] A.

[illegible] Certified Public Ac[illegible] [illegible] of the books of account and [illegible] [illegible] Angelus Milling Co., Inc., [illegible] [illegible] thereafter, [illegible] March 1, 1[illegible] [illegible] copies of the working papers [illegible] [illegible] Internal Revenue, two letters of [illegible] and typewritten. [illegible] static copies of the working papers [illegible] Internal Revenue were obtained [illegible] bankruptcy of the Niagara Falls Milling Company.

Niagara Falls Milling Company and Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) had common [illegible] account from July 1, 1938, to January 1, 1939. Both Niagara Falls Milling Company and Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) also had a common set of books; and when the representatives of the Bureau of Internal Revenue in examining the claim of Angelus Milling Co., Inc., for a refund of its processing taxes in July, 1[illegible], and in September, 1940, examined the books of the Niagara Falls Milling Company, they also examined the records of the Angelus Milling Co., Inc.

Deponent was unable to obtain the books of Angelus Milling Co., Inc., until about September, 1941, as they were in the custody of the Bankruptcy Court at Buffalo, New York. Deponent has, however, obtained the essential figures from his partner, Jackson A. Lyon, who in turn obtained them from the representatives of the Bureau of Internal Revenue, to wit, Bernard Lieben. A copy of the affidavit of deponent's partner, Jackson A. Lyon, accompanies deponent's affidavit.

Deponent knows of his own knowledge that representatives of the Commissioner of Internal Revenue investigated the claim for refund of the Angelus Milling Co., Inc., on its merits and sent Angelus Milling Co., Inc., a formal rejection of the claim on May 24, 1941. Deponent further states that he is President of both Niagara Falls Milling Co., Inc., and Angelus Milling Co., and knows of his own knowledge that the government has offered

[redacted] assets of $41,000.00.
[redacted] Angelus Mills-
[redacted] Inc., and [redacted] Angelus Mills Company not
[redacted] the Angelus Mills Co., Inc., nor [redacted] whatsoever
[redacted] Mills Company. [redacted] also one of the
[redacted] Angelus Mills Co., Inc., in bankruptcy.
[redacted] knows that
[redacted] Mr. Harry Dickinson of Lock-
port, New York, [redacted] Angelus Mills Co., Inc., the follow-
ing letter:

[redacted]

Internal Revenue Agent [redacted]
U.S. [redacted]
[redacted]

December 10, 1938

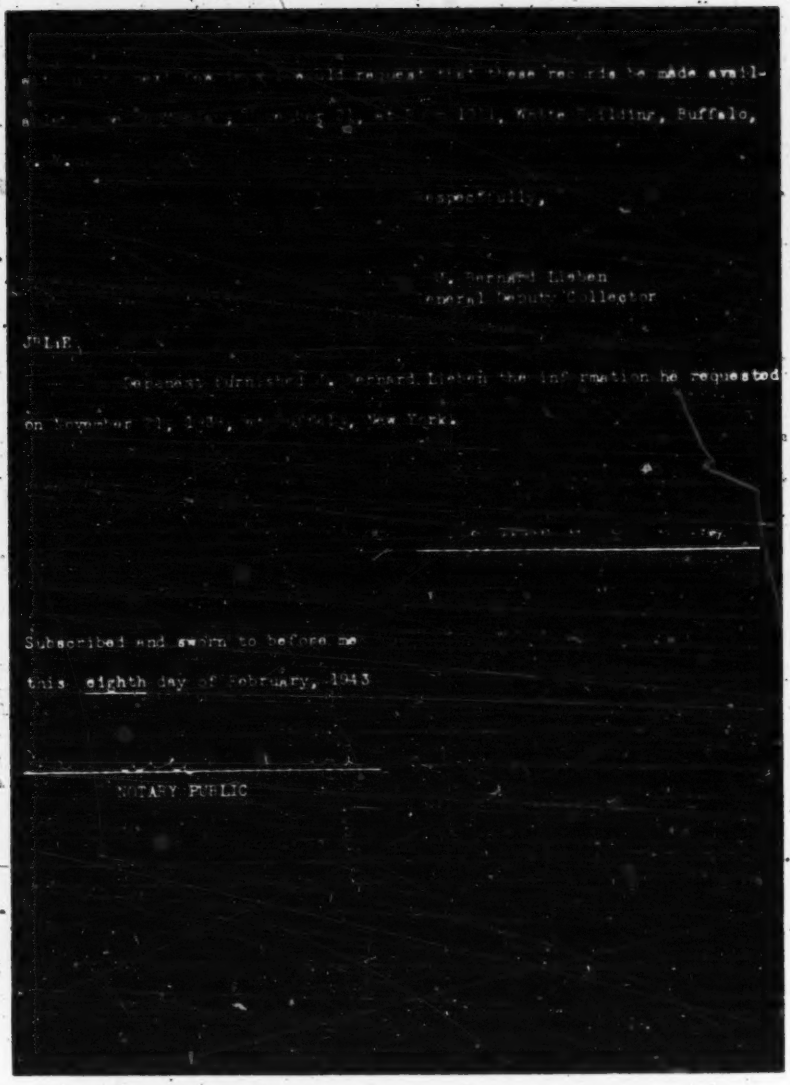
Mr. Harry Dickinson
Lockport, N. Y.

Sir:

In connection with the investigation of claim for refund under Title VII, Kay Bee Act of 1936 - Claim [redacted], you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:

General Ledger of both corporations
for the years 1935 and 1936
Minute Books of both corporations

In view of the fact that the investigation will be completed



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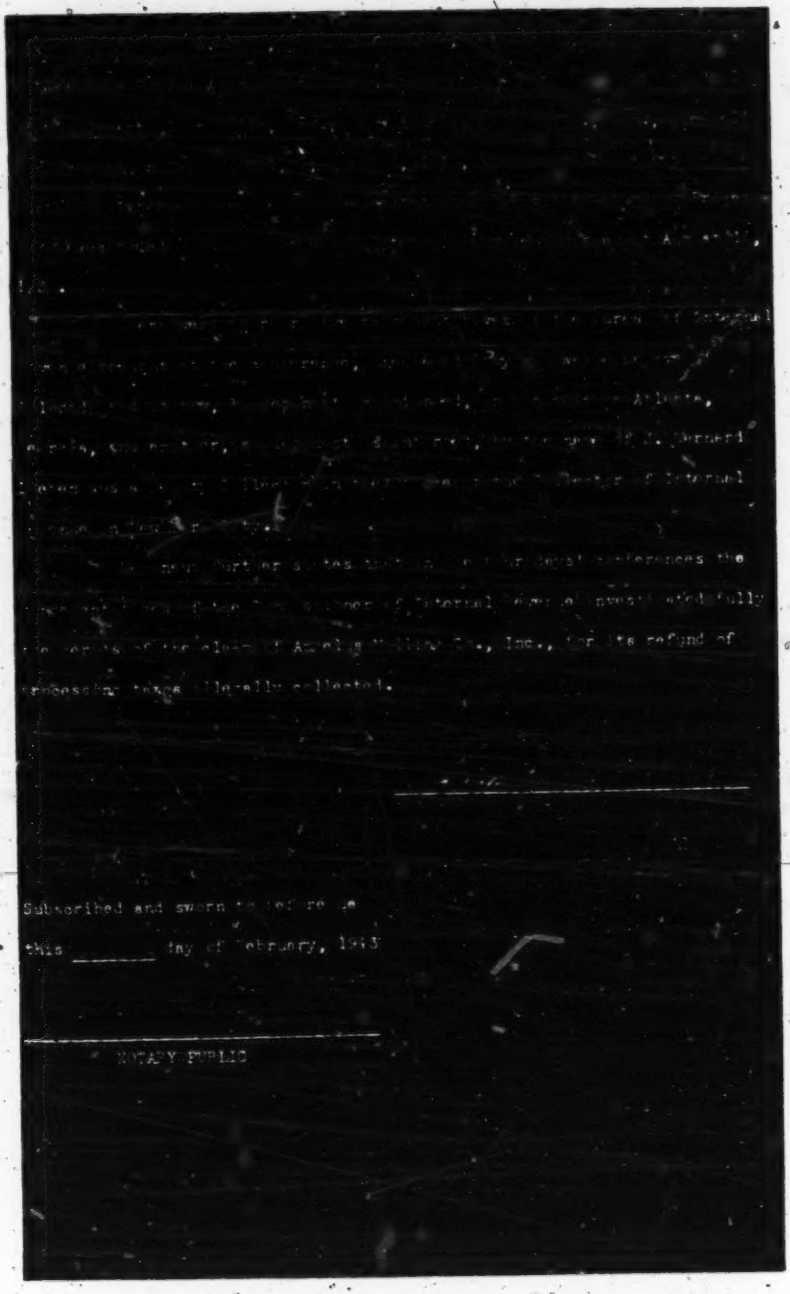

Subscribed and sworn to before me
this _____ day of February, 1913

NOTARY PUBLIC

The Tax Court
of the United States
FILED
Sept. 16, 1943
Enr.
Dkt.
Cal.
Stat.

IN THE TAX COURT OF THE UNITED STATES

ANGELUS MILLING COMPANY,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.
} Docket No. P. T. 308

CORRECTED PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of The Tax Court of the United States:

You are requested to take a transcript of record to be filed in the United States Court of Appeals for the Second Circuit, pursuant to the review taken in the above-entitled case, and to include in such transcript of record copies duly certified as correct of the following documents:

1. Document entries of proceedings before the United States Processing Tax Board of Review and The Tax Court of the United States.
2. Pleadings before the United States Processing Tax Board of Review and The Tax Court of the United States:
   (a) Petition filed August 20, 1941.
   (b) Respondent's Motion for Better Statement of Claim filed October 4, 1941.

(c) Petitioner's Motion to extend time to Reply to Motion for Better Statement of Claim filed October 27, 1941.

(d) Order of Board of October 27, 1941, granting Petitioner's Motion of October 27, 1941.

(e) Amendment to Petition in Response to Motion for Better Statement filed November 21, 1941.

(f) Respondent's Renewal of Motion for Better Statement of Claim to Apply to Petition, as amended, filed November 26, 1941.

(g) Motion for leave to file Amended Petition and Amended Petition filed December 29, 1941.

(h) Verification of Amended Petition filed January 16, 1942.

(i) Order of Board of January 20, 1942, denying Respondent's Motion for Better Statment of Claim, and granting Petitioner's Motion for leave to file Amended Petition.

(j) Respondent's Motion to Dismiss filed February 16, 1942.

(k) Verification of Petition filed June 12, 1942.

(l) Motion to Permit prior Motion to apply to Petition as amended, filed July 25, 1942, and granted July 27, 1942.

(m) Order and Opinion of Board of August 5, 1942, denying the Motion to Dismiss.

(1) Dissenting Memorandum Opinion of Board Chairman William Schwartz.

(n) Answer filed August 21, 1942.

(o) Respondent's Motion to Dismiss on Jurisdictional Grounds filed January 29, 1943.

3. Opinion and Decision of The Tax Court

(a) Opinion of May 4, 1943.

(b) Order of May 4, 1943.

4. Petition for Review and Assignments of Error.

5. Notice of Filing Thereof and Proof of Service.
6. Statement of Evidence Settled or Agreed Upon and Exhibits.
7. This Corrected Praecipe.

(Signed) PREW SAVOY,
Attorney for Petitioner.

I hereby this 16th day of September, 1943, accept due personal service of a copy of the foregoing Corrected Praecipe.

(Sgd) J. P. WENCHEL,
Attorney for Respondent.

[fol. 133] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 156—October Term, 1943

(Argued May 24, 1944. Decided July 6, 1944.)

ANGELUS MILLING COMPANY, Petitioner,

v.

JOSEPH D. NUNAN, Commissioner of Internal Revenue, Respondent

Before: L. Hand, Swan and Frank, Circuit Judges

On petition to review an order of the Tax Court of the United States, dismissing for lack of jurisdiction, a claim for refund of processing taxes, paid in compliance with the Agricultural Adjustment Act.

Prew Savoy, for the Petitioner.

F. E. Youngman, for the Respondent.

[fol. 134] L. HAND, *Circuit Judge:*

The Angelus Milling Company appeals from an order of the Tax Court of the United States, dismissing for lack of jurisdiction, a proceeding originally filed with the Processing Tax Board of Review, for the refund of a processing tax paid by it in compliance with the Agricultural Adjustment Act. On August 20, 1941, the company filed its petition with the Board to review the Commissioner's disallowance of its claim for refund. The Commissioner moved to dismiss the proceedings for lack of jurisdiction, and this motion was denied on August 5, 1942. On August 21st of that year, he filed his answer, again setting up lack of jurisdiction. Congress abolished the Board on December 31, 1942, and transferred its jurisdiction to the Board of Tax Appeals—now the Tax Court of the United States—and on January 29, 1943, the Commissioner renewed his motion which this time the Tax Court granted on May 4, 1943. This appeal (petition to review) followed. The ground of dismissal was that the petitioner had never filed an adequate claim for refund, as allowed by §903 of Title 7 of the Revenue Act of 1936, and by the regulations promulga-

ted thereunder: Articles 202, 601, 603, and 605, of Regulations 96.

The facts were as follows. The Angelus Milling Company, is a New York corporation, having its principal office in Niagara Falls, New York; until June 13, 1933 it was known as "Middleport Flour Mills, Inc." The Niagara Falls Milling Company, Inc. is a similar corporation; and between July 9, 1933 and January 6, 1936, both companies were processors of wheat within the meaning of the statute. Throughout that period they had one and the same majority shareholder, the same president, the same officers, a common set of books of account, a joint bank account, and the same employees. On these books each company was [fol. 135] charged with the cost of the wheat bought for it, and the cost of its manufacture, etc., and was credited with the selling price. Between July 9, 1933 and January 31, 1935, they filed with the Collector joint returns on account of their operations as processors, and paid over $324,000 in processing taxes. Between February 1, 1935 and November 30, 1935, the Niagara Company filed returns for itself and the Angelus Company, and paid the Collector $110,000. The Agricultural Adjustment Act was declared unconstitutional on January 6, 1936 (*United States v. Butler*, 297 U. S. 1), and on June 23, 1936, three claims were filed with the Commissioner, all stating the name of the taxpayer and claimant as "Niagara Falls Milling Company, Inc. and/or Middleport Flour Mills, Inc." (We shall call these claims: A-1, A-2 and A-3.) A-1 was for $57,875, payments made by the Niagara Falls Milling Company between July 31, 1933 and December 30, 1933; A-2 was for $244,895.40, payments made by that company between January 29, 1934 and December 31, 1934; and A-3 was for $131,274.42, payments made by that company between January 30, 1935 and December 12, 1935. The total of these is $434,045.27.

The Angelus Company does not assert that these claims conformed with the statute or regulations; but while they were still undetermined, on June 30, 1937, the Niagara Company filed a claim for refund on its own behalf alone in the sum of $436,231.73, for payments made between July 15, 1933 and December 30, 1935. This claim (which we shall call Claim B), was in proper form, and the Commissioner had power to consider it, though only as a claim of the Niagara Company. Although the amount claimed differs

by about $2000 from the aggregate of the amounts claimed in Claims A-1, A-2 and A-3, it was apparently intended to cover the processing taxes paid by both companies. On August 15, 1938, the Angelus Company filed a claim on its own behalf for the refund of $145,839.12 (which we shall [fol. 136] call Claim C). This was not in proper form; it complied in no way with the regulations, it merely contained, as an appendix, an apportionment between the Angelus Company and the Niagara Company of the aggregate to a penny of the amounts claimed in Claims A-1, A-2 and A-3. In an attached affidavit it declared that it "was originally filed, * * * in the name of the Niagara Falls Milling Company and/or Middleport Flour Mills, Inc." It was an attempt apparently to perfect or amend Claims A-1, A-2 and A-3. On May 24, 1941, the Commissioner rejected Claim C on the ground that it was incomplete under the regulations, and did not give him jurisdiction; and it is plain that neither Claims A-1, A-2 and A-3, taken together, nor Claim C taken in conjunction with them were in any way sufficient and that no award could have been made under them. *Lee Wilson* v. *Commissioner*, 111 Fed. (2) 313 (C. C. A. 8): S. C. 123 Fed. (2) 232. The Angelus Company answers this objection in two ways. First, it says that the Commissioner considered its claim upon the merits, and by doing so gave the taxpayer to suppose that he meant to consider the claim as it stood; and that this conduct "estopped" him from later rejecting it for irregularities of form. Second, it says that the five claims: A-1, A-2, A-3, B and C, which were all pending at the same time, collectively made an adequate claim by cross reference to one another, and should have been read together, in which case their meaning was plain.

The evidence upon which the company seeks to support the claim of "estoppel" is as follows. On November 18, 1938, the General Deputy Collector addressed a letter to the company's president at that time, Dickinson, asking leave to examine its records for the years 1935 and 1936, including its ledgers and minute books. This was granted. The company submitted two affidavits in opposition to the Commissioner's motion: one by O'Connor, its president at a later time; another by Lyon, a certified public accountant. [fol. 137] In his affidavit O'Connor swore that he had procured photostatic copies of the "working papers" of two "representatives" of the Bureau of Internal Revenue, who

examined the Angelus Company's records at the time they were examining those of the Niagara Company—a fairly obvious inference anyway, since there was only one set of records. These two officials, O'Connor swore, "investigated the claim for refund, of the Angelus Milling Co., Inc., on its merits and sent Angelus Milling Co., Inc. a formal rejection of the claim on May 21, 1941." In his affidavit Lyon swore that on September 4, 5, 6 and 7, 1940, on behalf of the Angelus Company he had conferences with "representatives of the Bureau "with respect to the claim for refund of processing taxes filed * * * on or about August 15, 1938. There were four or five representatives * * * present at the conferences; * * * in the four days' conference the representatives * * * investigated fully the merits of the claim of Angelus Milling Co., Inc. for its refund of processing taxes legally collected."

Since the Tax Court disposed of the petition upon motion to dismiss, and not after a hearing, the company is entitled to insist that we take in its favor any implications which can be drawn from this evidence; and we shall dispose of the appeal upon that assumption. Moreover, we shall also assume that, if the controversy had been between private parties, and if the Commissioner's "representatives" did in fact consider the claim upon the merits to the knowledge of the company's president and accountant, without suggesting that it was insufficient in form, it would have been too late thereafter to reject it. Therefore the question comes to whether the Commissioner is subject to the same rules in that regard as are private parties. It is abundantly settled that after the Commissioner has once rejected a claim for irregularities in form, it is too late to amend it. *Sugar Land Ry. Co.* v. *United States*, 48 Fed (2) 973 (Ct. Cls.); *New England Mutual Life Ins. Co.* v. *United States*, 49 Fed. (2) 662 (Ct. Cls.); *Wausau Sulphate Tire Co.* v. [fol. 138] *United States*, 49 Fed. (2) 665 (Ct. Cls.); *Solomon* v. *United States*, 57 Fed. (2) 150 (C. C. A. 2); *National Cattle Loan Co.* v. *United States*, 62 Fed. (2) 168, 170 (C. C. A. 7); *Elbee Chocolate Co.* v. *United States*, 63 Fed. (2) 773 (C. C. A. 2); *New York Trust Co.* v. *United States*, 87 Fed. (2) 889 (C. C. A. 2); *Edwards* v. *Malley*, 109 Fed. (2) 640, 645 (C. C. A. 1). In all these cases the time had necessarily already expired within which a claim could be filed, when the amendment was made, so that the taxpayer had to

have an excuse for his delay. The opinions do not expressly say that, had the Commissioner not rejected the claim before the amendment was offered, the excuse would have been good; but it seems most likely that they so assumed, for otherwise it would have been unnecessary to resort to rejection as the ground of decision. However, so far as appears, the excuse in no case was the Commissioner's conduct in inducing the taxpayer to rely upon an irregular claim; and it is theoretically possible that a right of amendment after rejection might exist in that situation, even if it existed in no other. Indeed, the Fifth Circuit appears to have so held in *United States* v. *Humble Oil and Refining Co.*, 69 Fed. (2) 214. See also *Weilman & Casey* v. *United States*, 4 Fed. Supp. 155 (D. C. E. Pa.). Be that as it may, *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 72, is flatly to the contrary. The Commissioner had given as plain indication as he did here, that he meant to dispose of the claim upon the merits, and yet in the end he rejected it for defects in form only. The taxpayer won for two reasons: first, because the amendment did not substitute so divergent a claim as to be a new "cause of action"; and second, because the amendment had been filed before rejection (p. 72). The second ruling necessarily presupposed that the rejection of a claim would cut off any opportunity for amendment, even though the Commissioner had lulled the taxpayer [fol. 139] into a false security. The language used was unequivocal: "'An argument is made that at the time of this amendment the claim had been finally rejected and the proceeding thereby ended. If so, it was too late. *McKesson & Robbins* v. *Edwards, supra; Solomon* v. *United States*, 57 Fed. (2) 150. When correction is thus postponed, there is no longer anything to amend, any more than in a law suit after the complaint has been dismissed."

There is therefore no distinction between the excuse of "estoppel" and any other excuse for delay in correcting a claim after rejection. A taxpayer who files a claim which does not conform with the statute, takes his chances that in the end the Commissioner may reject it, no matter how complaisant he may appear to be. The best he can hope is to amend before rejection; and indeed even before that occurs, he may not substitute a completely different claim. *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73; *United States* v. *Andrews*, 302 U. S. 517; *United States* v. *Garbutt*

Oil Co., 302 U. S. 528. This doctrine that no amendment may be too divergent helps to confirm the doctrine that rejection puts an end to all amendments, on which we are relying here. In point of justice it is as harsh to deny a taxpayer the privilege of substituting an altogether new claim after the time has expired, as it is to deny him the privilege of correcting irregularities in his claim after rejection. For, by hypothesis, in both cases the Commissioner has given the taxpayer reason to suppose that he will consider the claim upon the merits, and by so doing has caused him not to amend while he could. It makes no difference to the taxpayer what was his mistake; in either case he awakes to learn that it is never safe to put his trust in officials. The notion behind the doctrine is the familiar one that, not only may not the United States be sued unless it consents, but that its consent must be closely scrutinized and jealously circumscribed. That principle goes back to [fol. 140] the beginning of the Republic, and the Supreme Court has never shown any tendency to relax it. How far a government should accept the same responsibility for defaults of its agents that it imposes upon individuals, is clearly a matter for Congress. The result is often extremely harsh, as this case shows; but he who deals with the government must dot his i's and cross his t's; and if he assumes that he may rely upon the ordinary rules which apply as between individuals, he is doomed to disappointment.

There remains the second question: whether Claim C should be taken as conforming with the regulation because it incorporates Claim B by reference. It certainly did not do so expressly; on the contrary, as we have seen, it speaks of Claims A-1, A-2 and A-3 as its original and merely asks an apportionment of the sums demanded in them. Since Claims A-1, A-2 and A-3 were themselves insufficient, Claim C can of course gain nothing from them; and the only possible argument would be to say that Claim B was intended as a substitute for Claims A-1, A-2 and A-3, and that therefore when Claim C incorporated within itself Claims A-1, A-2 and A-3, it incorporated the substitute as well. That was certainly not the intention: Claim C having expressly referred to Claims A-1, A-2 and A-3 as its original, although Claim B was already in existence—and incidentally was the claim of another claimant—could not have intended to make that claim a part of itself. It

is true, as we have said, that Claim B on comparison with Claims A-1, A-2 and A-3, showed that apparently it included the taxes of both companies. But what was the Commissioner to infer from that? Nothing more than that somewhere amid the tangle of claims these two companies were making claim for all processing taxes paid collectively by both. It seems unnecessary to labor the argument that to treat the regulations as countenancing anything of the kind would be in effect to repeal them.

Order affirmed.

[fol. 141] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of July one thousand nine hundred and forty-four.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Jerome N. Frank, Circuit Judges.

ANGELUS MILLING COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from The Tax Court of the United States

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

Alexander M. Bell, Clerk.

[fols. 142-143] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Angelus Milling Company v. Commissioner of Internal Revenue. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed July 24, 1944. Alexander M. Bell, Clerk.

[fol. 144] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.